

EXHIBIT

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<p style="text-align: right;">Page 121</p> <p>1 A. So, yes. I am using a similar reasoning. 2 Q. Above that, above the Suzuki patent heading, 3 the second sentence above that, you state, "The 4 shutter system enables use of an impeller in close 5 proximity to the shaving head to blow directly upon 6 it through a large aperture." 7 Do you see that? 8 A. Yes. 9 Q. Is there any requirement in Claim 11 of the 10 '328 patent that the impeller be in close proximity 11 to the shaving head? 12 MS. WENDLANDT: Objection. You are 13 talking about Claim 12? 14 Q. Claim 11 or 12. 15 MS. WENDLANDT: 11 doesn't have an 16 impeller. 17 Q. I will ask you Claim 12 first. 18 A. It's not literally in the claims, no. 19 Q. With respect to Claim 11, is there any 20 requirement that the drying device be in close 21 proximity to the shaving head? 22 A. No. 23 Q. And in the system of the '328 patent, what 24 would happen to the blower if cleaning fluid got</p>	<p style="text-align: right;">Page 123</p> <p>1 It's possible that the device would break 2 down in time if fluid reached the blower, but it 3 would not be an immediate breakdown; is that correct? 4 A. Provided it didn't get into the electronics, 5 which it could. 6 Q. If you look to the next page, Page 20, and 7 you state there under the Davies patent, midway 8 through the paragraph, "Such a configuration could 9 not be readily adapted to the cleaning system of the 10 McKinley or Maatz sterilizers which are open to the 11 atmosphere and contain no lid." 12 Do you see that? 13 A. Yes. 14 Q. As we discussed earlier, there is no "open to 15 the atmosphere" limitation in Claims 11 and 12 of the 16 '328? 17 A. Right. Because here we are talking about 18 McKinley and Maatz. 19 Q. And I believe Mr. Phillips discusses Davies 20 in his third report. Let me see here. 21 At Page 43, Paragraph 152. 22 A. Okay. 23 Q. Do you disagree with Mr. Phillips that the 24 lid in the Davies patent is not necessary for the</p>
<p style="text-align: right;">Page 122</p> <p>1 through the louvered shutter? 2 A. Well, the cleaning fluid would be carrying 3 particles, contaminants; and if the blower were at 4 rest at the time that it landed on there, then, say, 5 the cleaning fluid would evaporate, and it would 6 leave the particles stuck to, or in the neighborhood 7 of the blower -- the impeller itself. 8 Q. Would the device cease to function? 9 A. It would function more poorly the more 10 contaminants and dirt wound up on it. 11 Q. So over time, performance would decrease? 12 A. Yes. It could get to the point where it 13 doesn't blow at all. 14 Q. Okay. But fluid getting into the blower 15 system, in and of itself, would not cause the device 16 to immediately break down, would it? 17 A. No. Provided you have as good a seal between 18 the blower and the motor, as would be required to 19 prevent you from damaging the motor, or the -- in 20 this device, there is this clutch, but basically that 21 fluid getting onto mechanical elements that are 22 moving would also pretty quickly tear them, because 23 it would get rid of all of the lubricants. 24 Q. So let me make sure I understand your answer.</p>	<p style="text-align: right;">Page 124</p> <p>1 cleaning device? 2 A. Repeat the question, please. 3 Q. Do you disagree with Mr. Phillips that the 4 lid in the cleaning device of the Davies patent is 5 beneficial, but not necessary? 6 A. To the cleaning function or to the drying 7 function? 8 Q. Let's start with the drying function. 9 A. So it changes things quite a bit in terms of 10 drying. 11 Q. Well, I guess, if it changes things, but do 12 you disagree with him that the lid is not necessary 13 to the drying function? 14 A. So, to use, say, an airstream to dry an 15 object, the key thing is bringing dry air. 16 If we are drying alcohol away, it means 17 air with a little alcohol vapor in it, right up 18 against or across the surfaces that you are trying to 19 dry, with high speed, right? 20 So that if you took the Davies' thing, 21 where you have a fan out here (indicating), and that 22 is fan is blowing -- I forget if it is drawing humid 23 alcohol or cleaning fluid, humid air out of the tank, 24 or pushing atmospheric air, I forget which one it is</p>

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<p style="text-align: right;">Page 125</p> <p>1 -- but in either case, he is getting a little bit of 2 the velocity effect, but the main thing he's doing is 3 decreasing the vapor of the cleaning fluid in that 4 compartment, right? 5 So that if you took the lid off of 6 Davies, but still had a blower sitting there, as it 7 is configured, with just that bit of the lid, it 8 would have a considerably smaller effect than in the 9 presence of the lid. 10 Q. So I understand that there is a considerably 11 smaller effect, but again, do you disagree with 12 Mr. Phillips that the lid is not absolutely 13 necessary?</p> <p>14 MS. WENDLANDT: Objection. 15 A. Okay. The lid is not absolutely necessary to 16 -- if the lid weren't there, it would be difficult to 17 make sense of that dryer, that fan, and whether it is 18 making a difference. 19 Does that make sense? 20 Q. Okay. I understand. 21 Let me ask this, then: For the McKinney 22 and Maatz patents, do you think it would be difficult 23 to put a lid on tank -- the upper tanks in both 24 patents, or let me ask you this: Do you think it</p>	<p style="text-align: right;">Page 127</p> <p>1 a more difficult question. 2 Q. Okay. The way the inventors did that was 3 through the louvered shutter system. 4 A. At least in that embodiment, yes. 5 Q. Was there any other embodiment? 6 A. I think that was the only -- well, I think 7 that was the only embodiment in which it was spelled 8 out, but I can't remember if they referred to it as 9 an alternative embodiment or not. I don't recall. 10 Q. Let's turn to Page 21 of your report. 11 You discuss there the Zeischke thesis, if 12 I am pronouncing that correctly. 13 A. Yes. 14 Q. Have you compared the Zeischke thesis with 15 the French '111 patent referenced in the '328 16 specification? 17 A. No. 18 Q. So, I take it, then, in your report you're 19 not offering any opinion as to the differences 20 between the Zeischke thesis and the French '111 21 patent, if any? 22 A. I don't think I discussed the French '111 23 patent. 24 Q. Do you know if any of the references cited in</p>
<p style="text-align: right;">Page 126</p> <p>1 would be beyond the skill of the ordinary artisan to 2 put a lid on the top of each of those tanks? 3 A. That's a question of degree. 4 So, are you saying would it be obvious to 5 put a lid on both of those in terms of obviousness? 6 In other words, you say would one skilled 7 in the art be able to figure that out? Well, one 8 skilled in the art would be able to figure most 9 things out. So are you asking -- so -- 10 Q. Would it require more than routine 11 engineering to design a system that would have a lid 12 on the tanks of either the McKinney or Maatz patents? 13 A. So one could -- routine engineering would 14 allow you to design a lid for either of these, yes. 15 Q. Okay. Am I correct that your opinion is that 16 where the inventiveness comes in is developing 17 something to allow for the provision of a fan in -- 18 incorporated within a cleaning device of the sort in 19 the -- described in the '328 patent? Am I right? 20 A. So incorporation of a fan in a way that would 21 actually improve drying in a substantial way. 22 Incorporation of a fan in general is 23 probably not difficult, but incorporation of a fan in 24 such away that it really does speed up the drying is</p>	<p style="text-align: right;">Page 128</p> <p>1 connection with the prosecution of the '328 patent 2 disclose a bracket for insertion of a shaving 3 apparatus therein? 4 A. I don't know. I really only addressed the 5 ones that were raised by Mr. Phillips. 6 Q. Okay. And at the bottom of Page 21, you 7 state, "More importantly, even if Mr. Zeischke had 8 drawn a bracket into which the electronic shaver 9 could be inserted for storage and charging, this 10 would not have taught a bracket into which the shaver 11 could be inserted during cleaning." 12 Do you see that? 13 A. Yes. 14 Q. Where in Claim 18 of the '328 patent is there 15 a requirement that the shaver has to be inserted into 16 the bracket during cleaning? And, again, I am 17 emphasizing "during cleaning" part of the statement. 18 A. So, again, it's not literally there, but 19 clearly from the specification when the bracket is 20 described, it's -- the bracket is -- you insert into 21 the bracket during the cleaning operation. 22 Q. Above that, in the paragraph above that, you 23 note that the rectangles, which I think are called 24 park positions, serve only to indicate the general</p>

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<p style="text-align: right;">Page 129</p> <p>1 location where a shaver could be placed for storage 2 and charging. 3 A. Yes. 4 Q. Isn't it correct that the bracket in the '328 5 patent is used for storage and charging of the 6 shaver? 7 A. It has additional functions, but those are -- 8 Q. Two functions. 9 A. Yes. And it doesn't perform them alone. 10 There is another distinction to make. 11 You store the shaver, not really in the bracket, but 12 in the combination of the bracket and cradle. 13 Q. Well, the park position described in Zeischke 14 would provide support while storing the shaver, 15 correct? 16 A. Yes. 17 Q. Then would they not function as a bracket 18 then? 19 A. I think a bracket is more than just a 20 function, as we discussed previously. 21 Q. Sure. It is a structure. 22 A. A specific type of structure. 23 Q. Well, does the cradle in the '328 patent, in 24 the structure disclosed in the '328 patent, does that</p>	<p style="text-align: right;">Page 131</p> <p>1 shaver in. That wouldn't be a bracket. 2 Q. Are there any other structures? 3 A. Sure. You could have a system of pins that 4 engaged the electronics as well as supports the 5 shaver. 6 Q. Look to the next page, on Page 22, at the 7 bottom, where you are discussing at Helmut Kraus's 8 suggestion, you state, "that one skilled in the art 9 should understand the need of an interlock does not 10 render obvious its realization that using a bracket 11 incorporated into the system as claimed in the '328 12 patent." 13 Do you see that? 14 A. Yes. 15 Q. Why would one of ordinary skill in the art 16 understand the need for an interlock? 17 A. You want to prevent people from grabbing the 18 razor while it is running in the cleaning system and 19 while the cleaning system is running and pulling it 20 out. That's common sense, I think. 21 Q. When you say "common sense," would that be 22 obvious? 23 A. The need for an interlock? So, realizing the 24 need for an interlock, I think is obvious.</p>
<p style="text-align: right;">Page 130</p> <p>1 cradle function as a bracket? 2 A. It has some of the functions of a bracket, 3 some functions that could have been carried out by a 4 bracket. 5 As to whether you could consider it 6 itself a bracket or not, I haven't thought about 7 that. 8 Q. Okay. Well, a position where the shaver, in 9 terms of the Zeischke thesis, a location where the 10 shaver could be stored and charged, you would not 11 consider that location to be a bracket? 12 A. Not simply, No. 13 You could design a product to do that, or 14 possibly a pair of brackets, but there is nothing in 15 there that says "a bracket" -- 16 Q. Well, would -- 17 A. -- or implies a bracket. 18 Q. -- that functionality suggest a bracket to 19 one of ordinary skill in the art? 20 A. No. I think it suggests all kinds of 21 structures. 22 Q. Such as what structures? 23 A. You could have a small detente in the 24 surface, with electrical contacts, you place the</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. Is an interlock different from a bracket? 2 A. Oh, certainly. 3 Q. What are the difference between an interlock 4 and a bracket? 5 A. An interlock is a function. A bracket is a 6 structure. 7 Q. An interlock doesn't actually constitute a 8 structure? 9 A. You would have to realize the interlock using 10 the structure, but if you are telling me you need an 11 interlock, you are telling me of a function you need. 12 Q. So would one of the structures that you can 13 use to perform function of an interlock be a bracket? 14 A. Yes. I should say not simply a bracket, but 15 a bracket with various things in it to do this. 16 Q. Are there any other structures that you could 17 think of that could provide the functions of an 18 interlock? 19 A. Sure. You should have all types of shapes of 20 structures. You could have structures with pivots 21 that you bring onto the shaver. You could have a 22 strap that goes around the shaver and locks while it 23 is running. So I think there are many. 24 Q. Turning next to indefiniteness.</p>

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<p style="text-align: right;">Page 133</p> <p>1 You render the opinion that the '328 2 patent is not indefinite; is that correct? '328 and 3 '556 patent are not indefinite? 4 A. Correct. 5 Q. What is your understanding of the analytical 6 framework for indefiniteness? 7 A. So you would ask whether one skilled in the 8 art reading the patent would be able to distinguish 9 between those items which are claimed and those which 10 are not. 11 I may be missing something here, but I 12 think that's -- I paraphrased what I get from it. 13 So it has to be definite, and it has to 14 lay out definitely what has been invented. 15 Q. It is your opinion that the inventors in fact 16 did that? 17 A. Yes. 18 Q. In the third paragraph, under 19 "indefiniteness," you state that "The claimed cradle 20 structure was a framework for supporting an object." 21 Do you see that? 22 A. Yes. 23 Q. Can you tell me where in the court's 24 construction of cradle structure the term "framework"</p>	<p style="text-align: right;">Page 135</p> <p>1 "framework" is in the court's construction itself. 2 Q. Do you think that one of the ordinary skill 3 in the art would understand "cradle structure" to 4 mean "a framework for supporting an object"? 5 A. Would understand that a framework is -- so we 6 are going to move down the chain here of terms. We 7 will get to "framework." 8 So it depends on what you think of as 9 framework, but generally I think that's a pretty good 10 synonym for "cradle structure." 11 Q. And if you turn your attention to the Lee 12 patent, which I think I marked earlier. 13 A. Yes. 14 Q. And this is the -- 15 MR. SHIMOTA: Did I? 16 MS. WENDLANDT: No. 17 A. No. We just looked at the picture in the 18 report. 19 MR. SHIMOTA: I would like to mark as 20 157, Defendant's Exhibit No.157, U.S. Patent No. 21 3,890,988, which we have been calling the Lee patent. 22 EXHIBIT NO. 157 MARKED 23 Q. Okay. And you refer to the metal sink 10 in 24 the Lee patent in your report. Do you see that?</p>
<p style="text-align: right;">Page 134</p> <p>1 appears, or word? 2 A. It does not. 3 Q. Do you believe that "framework" is implied 4 anywhere in the court's construction of the "cradle 5 structure" limitation? 6 A. No. 7 Q. So why do you say in the next sentence, "In 8 this case, a" -- or in the next clause of the same 9 sentence -- "In this case, a framework adapted for 10 supporting and receiving the shaving head"? 11 A. Well, remember that this paragraph is talking 12 -- is stepping back from the court's construction and 13 looking at the claim itself, right? 14 Q. Okay. 15 A. What we are talking about here is we are 16 taking a step back, at least in this prelude to the 17 section here, from the court's construction, which is 18 already laid out; and we are talking about, okay, you 19 know, where this business -- how the court arrived at 20 that construction; and I think in the Marksman 21 hearing that the judge did -- talked about the ships' 22 cradles and so on, which -- you know, discussions 23 along these lines. 24 So I'm not claiming here that the word</p>	<p style="text-align: right;">Page 136</p> <p>1 A. Yes. 2 Q. In your opinion, is the metal sink 10 a 3 structure? 4 A. Yes. 5 Q. Is the metal sink 10 able to receive and 6 retain fluid? 7 A. Yes. 8 Q. Is the metal sink 10 in the Lee patent a 9 receptacle? 10 A. Yes. That's the word used in the patent. 11 Q. Is the metal sink 10 in the Lee patent a 12 framework? 13 A. Yeah, probably -- well, I haven't thought 14 about that question. It would seem to be debatable. 15 Q. And is the item 10 in the Lee patent -- in 16 your opinion, is the reciprocal 10 in the Lee patent 17 a cradle structure? 18 A. No. 19 Q. And in your opinion, is the receptacle 10 of 20 the Lee patent able to receive or support the shaving 21 head of the shaving apparatus? 22 A. Able to? Yes. 23 Q. Excuse me, a -- I'm sorry. That's my 24 mistake.</p>

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<p style="text-align: right;">Page 137</p> <p>1 Is the receptacle 10 of the Lee patent 2 adapted to receive the shaving head of a shaving 3 apparatus? 4 A. No. 5 Q. But I guess -- well, it is your opinion, 6 though, that the receptacle 10 of the Lee patent is 7 able to receive the shaving head of a shaving 8 apparatus? 9 A. Yes. 10 Q. And as we discussed this morning, it's 11 correct that you have not offered an opinion as to 12 whether or not the Lee patent is not analogous art? 13 A. Correct. 14 Q. Turning to the Schinn patent. Let me get 15 that out. 16 MR. SHIMOTA: Mark as Defendant's 17 Exhibit 158, U.S. Patent 4,815,486, referred to as 18 the Schinn patent. 19 EXHIBIT NO. 158 MARKED 20 Q. You offer an opinion regarding the hooks and 21 wire basket inside of drum 14 of the Schinn patent; 22 is that correct? 23 A. Correct. 24 Q. And is the drum 14 of the Schinn patent a</p>	<p style="text-align: right;">Page 139</p> <p>1 Q. Is drum 14 is a cradle structure? 2 A. I think you would again have to say a cradle 3 structure for -- 4 Q. Is drum 14 a cradle structure for paint 5 equipment? 6 A. Okay. It would read on -- it would read on 7 the court's construction, because, as we say here, it 8 is adapted specifically to receive paint equipment. 9 Q. Okay. I understand. 10 Is drum 14 adapted to receive the shaving 11 head of a shaving apparatus? Receive or support, 12 excuse me. 13 A. No. I should -- I think I just made a 14 mistake a moment ago, because the -- that the hooks 15 and wire baskets are designed to receive paint 16 equipment. 17 We're -- there is not that much detail 18 given. So giving Schinn the benefit of the doubt 19 that they are designed to do that in a specific way, 20 but also we shouldn't sweep under the rug the 21 distinction between the hooks and wire baskets and 22 drum 14. Drum 14 contains a lot of stuff. 23 Q. Okay. 24 A. Again, I don't -- it may not be quite</p>
<p style="text-align: right;">Page 138</p> <p>1 structure? 2 A. Yes. 3 Q. And is the drum 14 of the Schinn patent able 4 to receive or retain cleaning fluid? 5 A. Yes. 6 Q. Is the drum 14 of the Schinn patent a 7 receptacle? 8 A. You probably would have to sharpen the 9 definition of "receptacle." 10 A receptacle for what, for example? 11 Q. Well, what is your understanding of a 12 receptacle? 13 A. Well, you could have a receptacle for an 14 electrical plug, or a receptacle for a pen, or a 15 receptacle for trash. 16 Q. Is this a receptacle for paint equipment? 17 A. Yes. 18 MS. WENDLANDT: Drum 14? 19 MR. SHIMOTA: Yes. 20 A. Yes. It does receive paint equipment. 21 Q. Is drum 14 a framework? 22 A. Yes. Similar to the sink, it's a structure, 23 but we haven't really laid out what "framework" 24 means.</p>	<p style="text-align: right;">Page 140</p> <p>1 accurate to say that you could think of drum 14 2 itself as adapted to receive and support the patent 3 equipment. 4 Q. Well, let me ask this: Is drum 14 adapted to 5 receive the shaving head of a shaving apparatus? 6 A. No. 7 Q. Is drum 14 able to receive the shaving head 8 of a shaving apparatus? 9 A. Well, able, yes, but again, unless you took 10 the head off of the shaving apparatus, you would 11 probably wreck the shaving apparatus. 12 Q. I understand. Okay. 13 A. I should say that the same applies to the 14 Lee. 15 Q. Let's look to Cunningham. I will give you 16 that. 17 MR. SHIMOTA: Mark this as Defendant's 18 Exhibit 159, U.S. Patent No. 5,335,394, referred to 19 as the Cunningham patent. 20 EXHIBIT NO. 159 MARKED 21 Q. So directing your attention specifically to 22 Figure 4 of the Cunningham patent, which is actually 23 illustrated in your report. 24 Is the basket 45 shown in Figure 4 a</p>

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<p>1 structure?</p> <p>2 A. Yes.</p> <p>3 Q. Is the basket 45 a receptacle?</p> <p>4 A. Again, I think you have to say receptacle for</p> <p>5 something.</p> <p>6 Q. A receptacle for here the dentures?</p> <p>7 A. Yes.</p> <p>8 Q. Is basket 45 a framework?</p> <p>9 A. Yes.</p> <p>10 Q. And is basket 45 a cradle structure?</p> <p>11 A. Again, are you talking about a cradle</p> <p>12 structure as claimed? A cradle structure for</p> <p>13 dentures?</p> <p>14 Q. I am saying a cradle structure, in general,</p> <p>15 in the more general sense?</p> <p>16 A. In general? I would say a cradle structure</p> <p>-- I think not.</p> <p>18 Q. Is the basket 45 of the Cunningham patent</p> <p>19 able to receive fluid?</p> <p>20 A. Well, it can be lowered into fluid. In that</p> <p>21 sense, yes.</p> <p>22 Q. Is the basket 45 of the Cunningham patent</p> <p>23 adapted to receive or support the shaving head of a</p> <p>24 shaving apparatus?</p>	<p style="text-align: right;">Page 141</p> <p>1 A. Yes. That's the preferred embodiment.</p> <p>2 Q. So you do agree with him that there's no</p> <p>3 explicit description of a cleaning system with a</p> <p>4 cradle structure that only receives cleaning fluid?</p> <p>5 A. As we said, you can deduce from the claims</p> <p>6 that one which only received but did not retain</p> <p>7 cleaning fluid was contemplated by the inventors.</p> <p>8 Q. It's a little different question.</p> <p>9 A. I'm sorry.</p> <p>10 Q. I am asking you with respect to the explicit</p> <p>11 written description.</p> <p>12 Do you disagree with Mr. Phillips that</p> <p>13 there is no explicit written description</p> <p>14 corresponding with a cradle structure that receives</p> <p>15 but does not retain cleaning fluid?</p> <p>16 MS. WENDLANDT: Objection.</p> <p>17 A. Again, if you read the patent including the</p> <p>18 claims, you see that, for example, Claim 1 was</p> <p>19 intended to include cradle structures that do not</p> <p>20 retain fluid.</p> <p>21 Q. Where do you see that in Claim 1?</p> <p>22 A. It's in Claim 2.</p> <p>23 Q. It's in Claim 2?</p> <p>24 A. Claim 2 implies that about Claim 1.</p>
<p>1 A. No.</p> <p>2 Q. Is the basket 45 of the Cunningham patent</p> <p>3 able to receive the shaving head of a shaving</p> <p>4 apparatus?</p> <p>5 A. Depending on its dimensions, it could.</p> <p>6 Q. Could you turn to Page 26 of your report.</p> <p>7 A. 26?</p> <p>8 Q. Yes.</p> <p>9 A. Yes.</p> <p>10 Q. In item 6 you discuss written description.</p> <p>11 A. Okay.</p> <p>12 Q. Can you provide for me your analytical</p> <p>13 framework you used in discussing written description?</p> <p>14 A. So what I did was I compared the court's</p> <p>15 claim construction with the written description in</p> <p>16 the patents and checked that they were consistent.</p> <p>17 Q. And it is your opinion that the court's claim</p> <p>18 construction and the written description are</p> <p>19 consistent?</p> <p>20 A. Yes.</p> <p>21 Q. Do you disagree with Mr. Phillips that the</p> <p>22 only embodiment of the cradle structure disclosed in</p> <p>23 the '328 patent both receives and retains cleaning</p> <p>24 fluid?</p>	<p style="text-align: right;">Page 142</p> <p>1 Q. Why?</p> <p>2 A. So Claim 2 says -- I will paraphrase -- Claim</p> <p>3 2 says that the inventors claim a device in which the</p> <p>4 outlet is small enough that it does retain fluid, but</p> <p>5 otherwise it is like Claim 1.</p> <p>6 It's a dependent claim of Claim 1. So</p> <p>7 there would be no claim to Claim 2 if Claim 1 didn't</p> <p>8 include things in which the outlet were large enough</p> <p>9 that it did not retain fluid.</p> <p>10 Q. Well, aside from Claim 2 -- would you agree</p> <p>11 with me that Claim 2 doesn't say anything about a</p> <p>12 cradle? You are implying from Claim 2 that a cradle</p> <p>13 structure -- or you are inferring from Claim 2 a</p> <p>14 cradle structure that receives but does not retain</p> <p>15 cleaning fluid; is that correct?</p> <p>16 MS. WENDLANDT: Objection.</p> <p>17 A. I would say it just supports the overall</p> <p>18 logical reading of the thing.</p> <p>19 So Claim 1 says that the cradle structure</p> <p>20 -- that there is a feed device that provides fluid to</p> <p>21 the cradle structure. It doesn't lay out whether it</p> <p>22 retains or doesn't retain.</p> <p>23 Then to you to Claim 2, and you are</p> <p>24 saying we want to include things like Claim 1, but</p>

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<p style="text-align: right;">Page 145</p> <p>1 also specifically things that retain fluid, which 2 would indicate to you, unless Claim 2 were completely 3 meaningless, that Claim 1 includes things that did 4 not retain fluid.</p> <p>5 Q. Okay. What other written description, aside 6 from Claim 2, corresponds with a cradle structure 7 that receives but does not retain cleaning fluid?</p> <p>8 A. I can't think of specific phrases or mention. 9 As I said, the preferred embodiment did 10 contain...</p> <p>11 Q. Would you agree with there is only one 12 preferred embodiment described in the '328 patent?</p> <p>13 A. There is one preferred embodiment, and then 14 there is a second embodiment mentioned which goes 15 into details about how the motors are configured or 16 the motor is configured and the clutches.</p> <p>17 Q. I understand.</p> <p>18 A. I think that's a second embodiment, although 19 it doesn't jump out at you when you read it.</p> <p>20 Q. That embodiment, would you agree with me, 21 that second embodiment has nothing to do with whether 22 or not the cradle receives --</p> <p>23 A. It doesn't talk about the cradle, yes.</p> <p>24 Q. Well, if you use the device in the '328</p>	<p style="text-align: right;">Page 147</p> <p>1 deposition testimony that Rayovac cited in connection 2 with its arguments pertaining to written description 3 for Mr. Braun and Dr. Pahl?</p> <p>4 A. I don't recall the specifics.</p> <p>5 Q. For example, in your opinion here, you state 6 Dr. Pahl testified that he conceived that he had -- 7 Dr. Pahl testified that he had conceived of a 8 cleaning system wherein liquid was not retained by 9 the cradle, but was flushed through the shaver head.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Does it remain your opinion that Dr. Pahl 13 offered that testimony?</p> <p>14 MS. WENDLANDT: Objection.</p> <p>15 A. The only way I would change it if I were to 16 reread it. So far, it remains my opinion, yes.</p> <p>17 MR. SHIMOTA: I would like to mark as 18 Defendant's Exhibit 160 the deposition of Diethrich 19 Paul.</p> <p>20 EXHIBIT NO. 160 MARKED</p> <p>21 Q. I cite you to Page 80, specifically Lines 2 22 through 14.</p> <p>23 Can you tell me where on Lines 2 to 14 24 Dr. Pahl said he conceived of a system wherein</p>
<p style="text-align: right;">Page 146</p> <p>1 patent, in the preferred embodiment of the '328 2 patent -- if you use the device described in the 3 preferred embodiment of the '328 patent with a cradle 4 structure that did not retain cleaning fluid, would 5 the shaver be cleaned?</p> <p>6 MS. WENDLANDT: Objection.</p> <p>7 A. It could be cleaned. It would really depend 8 a lot on details.</p> <p>9 Q. Such as what?</p> <p>10 A. Such as where the inlet -- where the cleaning 11 fluid is actually delivered relative to the razor, 12 whether when the razor is running it would draw fluid 13 into its interior.</p> <p>14 So you could conceive of it working, yes.</p> <p>15 Q. Are any of those details provided in the 16 specification of the '328 patent which you have just 17 mentioned?</p> <p>18 A. No. I think it's pretty vague on those 19 counts.</p> <p>20 Q. Have you reviewed -- you said you reviewed 21 the summary judgment motions filed in this case?</p> <p>22 A. Yes. I should say I think those submitted by 23 Rayovac, but not those submitted by Braun.</p> <p>24 Q. Did you have a chance to look at the</p>	<p style="text-align: right;">Page 148</p> <p>1 liquid was flushed through the shaver head?</p> <p>2 A. "Let's put that way. We once considered 3 whether we could spray the stuff in."</p> <p>4 Q. That's what you think that means? That's 5 flushing it through the shaving head? That's what 6 you are relying upon?</p> <p>7 A. Yes.</p> <p>8 Q. Did you read the next part of his testimony 9 that states, "Well, when we pumped the liquid in, 10 it's basically also spraying cold spray. You can 11 pump it. Call it pumping. Don't really, as long as 12 you have a cradle. How you feed in a liquid into the 13 cradle is irrelevant for my opinion. The main thing 14 is that the cutter block is immersed in the liquid."</p> <p>15 Do you see that?</p> <p>16 A. Correct.</p> <p>17 Q. Does that change your opinion in any way that 18 Dr. Pahl conceived of a system in which the cradle 19 did not retain cleaning fluid?</p> <p>20 MS. WENDLANDT: Objection.</p> <p>21 A. It doesn't really.</p> <p>22 I mean, he is talking about you could 23 spray it, spray it into the cradle or pump it into 24 the cradle, when he is talking about spraying fluid</p>

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<p style="text-align: right;">Page 149</p> <p>1 into a dishwasher, right?</p> <p>2 Q. Yes.</p> <p>3 A. When he said, "Let's put that way, we once</p> <p>4 considered whether we would spray the stuff in," he</p> <p>5 is talking -- an analogy to a dishwasher which sprays</p> <p>6 stuff at the dishes.</p> <p>7 So I don't think that looking at the word</p> <p>8 "spray" is the key, because he used the word "spray"</p> <p>9 in a different sense, but rather what he was talking</p> <p>10 about here was spraying in -- you are going to spray</p> <p>11 it into the cleaning head or immerse it.</p> <p>12 In other words, that first sentence --</p> <p>13 read the whole sentence. "Let's put that way, we</p> <p>14 once considered whether we could spray the stuff in,</p> <p>15 but I personally feel it's much more efficient if you</p> <p>16 immerse the shaver head, especially the cutter block</p> <p>17 into liquid."</p> <p>18 So in that sentence he is comparing two</p> <p>19 approaches: Spraying the liquid -- you are going to</p> <p>20 spray it -- could spray it into cradle, but here,</p> <p>21 based on the context, you think he is spraying it</p> <p>22 into the shaver head, but he decided it was better to</p> <p>23 immerse the shaving head. So I don't see why you are</p> <p>24 reading this to the contrary.</p>	<p style="text-align: right;">Page 151</p> <p>1 Then we continue down, and he gives some</p> <p>2 details. He said we didn't test spraying, but we</p> <p>3 decided it was better to dive the thing down, and</p> <p>4 then the question is: Spray liquid into the cradle?</p> <p>5 He said, well, you could spray it into</p> <p>6 the cradle or pump it into the cradle, called the</p> <p>7 same thing, and then he had emphasized that the most</p> <p>8 important thing for the cleaning is the immersion,</p> <p>9 and, uhm, I think they continue on, and finally says</p> <p>10 -- the questioner asks: What other ways did you</p> <p>11 consider to operate your cleaning system? He says,</p> <p>12 well, okay, that was it.</p> <p>13 Q. So you see that he says: I think it was</p> <p>14 simply that thing, fill up a cradle with liquid, put</p> <p>15 the shaver in, and let the cutter blocks operate.</p> <p>16 Do you see that, right?</p> <p>17 A. So he is summarizing what he thought was the</p> <p>18 best way.</p> <p>19 Q. You see it says, the question is next asked,</p> <p>20 "That's the idea you thought of , right? And the</p> <p>21 answer is "yes"?</p> <p>22 A. Yes. But I don't think he was -- I don't</p> <p>23 think he -- I don't think that question in that</p> <p>24 context means that is the only idea you thought of.</p>
<p style="text-align: right;">Page 150</p> <p>1 Q. Did you consider the rest of the testimony on</p> <p>2 Page 81?</p> <p>3 A. I will take a moment to read it.</p> <p>4 Q. Sure.</p> <p>5 A. Okay. I have read it.</p> <p>6 Q. After reading that testimony, it still</p> <p>7 remains your opinion that Dr. Pahl thought of a</p> <p>8 cradle that received, but did not retain cleaning</p> <p>9 fluid?</p> <p>10 MS. WENDLANDT: Objection.</p> <p>11 A. Yes, I think so.</p> <p>12 I mean, he said "better cleaning result"</p> <p>13 when he was asked about immersion. So it is better</p> <p>14 than what? Better than spraying it in.</p> <p>15 Q. So you're inferring that here he's saying you</p> <p>16 get a better cleaning result than if you spray fluid</p> <p>17 in?</p> <p>18 MS. WENDLANDT: Objection.</p> <p>19 A. I mean, I am just reading it. They're</p> <p>20 discussing -- they start by discussing spraying, like</p> <p>21 a dishwasher.</p> <p>22 He said we considered spraying like a</p> <p>23 dishwasher, but he thought it was more efficient to</p> <p>24 immerse, right?</p>	<p style="text-align: right;">Page 152</p> <p>1 I mean, clearly they had thought of</p> <p>2 brushes. They had thought of all sorts of things,</p> <p>3 right? So I don't think -- I don't think that is</p> <p>4 read as that is the only idea you thought of.</p> <p>5 Q. Okay. So after reading that, your opinion is</p> <p>6 based upon -- well, taking a look at the top of Page</p> <p>7 80 where he says "spray stuff in" --</p> <p>8 A. Yes.</p> <p>9 Q. -- you're assuming from that he means that</p> <p>10 stuff is sprayed inside the shaving head, not into</p> <p>11 the cradle, and when stuff is sprayed into the</p> <p>12 shaving head, it is not -- no stuff is retained by</p> <p>13 the cradle; is that correct?</p> <p>14 MS. WENDLANDT: Objection.</p> <p>15 A. Yeah, because he was looking at -- in other</p> <p>16 words, he was looking at alternatives to immersing</p> <p>17 the shaver head.</p> <p>18 So that alternative, the only way I could</p> <p>19 see it is that you spray and stuff draining out</p> <p>20 without accumulating, at least accumulating enough to</p> <p>21 immerse the shaver head. That seems to me the only</p> <p>22 way you could read it.</p> <p>23 Q. Well, don't you see where it he says it</p> <p>24 doesn't matter how fluid gets to the cradle, at Line</p>

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<p style="text-align: right;">Page 153</p> <p>1 16, as long as there is immersion of the cutter 2 block?</p> <p>3 A. Right. That was once he concluded that 4 immersion was effective.</p> <p>5 Q. So he says it doesn't spray it or pump, the 6 main thing is immersion?</p> <p>7 A. Right. Because that sentence at Line 5, 6 8 and 7, it's talking about immersion and an 9 alternative to immersion. I don't think you could 10 argue with that.</p> <p>11 Q. Okay.</p> <p>12 A. When he's talking 16 -- for example, 16 to 13 21, he is reaffirming the choice to go with 14 immersion.</p> <p>15 Q. All right. From this testimony, have you 16 deduced that Dr. Pahl thought of this idea prior to 17 the filing of the '328 patent?</p> <p>18 MS. WENDLANDT: Objection.</p> <p>19 A. I don't think there is a time -- I didn't 20 study this to see when he had conceived of this, when 21 this was going on.</p> <p>22 So on its own, you couldn't conclude 23 about this thought process relative to the time of 24 filing, unless from the larger context you can, but I</p>	<p style="text-align: right;">Page 155</p> <p>1 the testimony, you don't know when Dr. Pahl came up 2 with his alleged spraying idea; is that correct?</p> <p>3 A. Dates aren't given. It's implied that it was 4 early on, but it's not definite, I don't think.</p> <p>5 Q. Okay. And when you are discussing written 6 description, why are you talking -- going back to 7 your report -- why are you talking about claim 8 construction?</p> <p>9 MS. WENDLANDT: Objection.</p> <p>10 A. Well, I think the argument that Mr. Phillips 11 brought was that the patents lack an adequate written 12 description, and he was pointing to the court's 13 construction. So I simply responded to that.</p> <p>14 Q. Well, do you understand the claim 15 construction and the validity of a patent's -- 16 patent validity are different issues?</p> <p>17 MS. WENDLANDT: Objection.</p> <p>18 A. I think so. But again, I was really just 19 responding to the argument advanced by Mr. Phillips.</p> <p>20 Q. Isn't Mr. Phillips' argument that there is no 21 written description corresponding with the cradle 22 structure that receives but does not retain cleaning 23 fluid?</p> <p>24 MS. WENDLANDT: Objection.</p>
<p style="text-align: right;">Page 154</p> <p>1 can't find that; but at the time of filing, you will 2 find claims in the German application, like Claim 2, 3 which is I think is much stronger and clearer 4 anyways.</p> <p>5 Q. Have you considered the German application 6 and the American application?</p> <p>7 A. Yes. Translation in the prosecution history.</p> <p>8 Q. Do you know whether the claims of the German, 9 the original German patent application match those of 10 the U.S. Patent application?</p> <p>11 A. Well, they changed, but the relevant claim 12 that we are talking about here, which is Claim 2, and 13 finally the '328 is -- appears maybe once or twice in 14 the original Claim 1, I think Claim 9 and maybe 15 another claim. So it's there from the very 16 beginning.</p> <p>17 Q. So it never changed during prosecution?</p> <p>18 MS. WENDLANDT: Objection.</p> <p>19 A. Well, claims changed, and maybe the phrasing 20 changed, but this was definitely a claim in the 21 German application that talked about -- that was 22 dependent on previous claims that talked about 23 dimensioning the outlet so that fluid was retained.</p> <p>24 Q. Okay. So you need -- well, stepping back to</p>	<p style="text-align: right;">Page 156</p> <p>1 A. Maybe we should read it, but I think that was 2 the key to it, but he did point to the construction, 3 I believe. 4 I don't remember the details of what he 5 wrote.</p> <p>6 Q. Have you considered Mr. Braun's testimony in 7 connection with the cradle structure?</p> <p>8 A. I read it. I don't know -- I don't seem to 9 have discussed it here.</p> <p>10 Q. Do you know when you read it?</p> <p>11 A. Braun's deposition? Early on in this thing. 12 Probably before the first report, but I'm not 13 certain.</p> <p>14 THE VIDEOGRAPHER: Going off the record. 15 This marks the end of videotape number two in the 16 deposition of Samir Nayfeh. We are going off the 17 record. The time is 2:24. 18 (A recess was taken.)</p> <p>19 THE VIDEOGRAPHER: We are back on the 20 record. This marks the beginning of videotape number 21 three in the deposition of the Samir Nayfeh. The 22 time is 2:34.</p> <p>23 MR. SHIMOTA: I would like to mark as 24 Defendant's Exhibit 161 Volume 1 of the deposition of</p>

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<p style="text-align: right;">Page 157</p> <p>1 Gebhart Braun. 2 EXHIBIT NO. 161 MARKED 3 MS. WENDLANDT: Jim, we should probably 4 take the opportunity to correct Dr. Nayfeh's previous 5 testimony about when he first read Mr. Braun 6 deposition transcript. 7 I think he indicated before, it was prior 8 to his first report. It is clear it wasn't until 9 after Mr. Phillips' first report. 10 MR. SHIMOTA: Okay. Thank you. 11 Q. And I would like to direct your attention to 12 Page 75, which you can look at the other pages for 13 context, but in particular I am interested in the 14 question which starts at Line 3 on 75: "Did you ever 15 test the cleaning system in a situation where there 16 was no fluid retained in the cradle structure?" 17 "Answer: This was like if I just turn 18 the razor with the head down, and I just operate it. 19 How should this cleaning work? This would mean we 20 would need a cleaning system. This would mean we 21 would just have to turn the razor and run it." 22 Do you see that? 23 A. Yes. 24 Q. Does that testimony in any way change your</p>	<p style="text-align: right;">Page 159</p> <p>1 structure and the fluid might be drawn into the 2 razor. So my answer is the same as before. 3 Q. Well, do you think with respect to the 4 deposition testimony that we are describing here, do 5 you think that Mr. Braun was working with a different 6 cleaning system than the cleaning system described in 7 the '328 patent? 8 MS. WENDLANDT: Objection. 9 A. That could be. 10 There is not necessarily a one-to-one 11 correspondence between what they were building and 12 what they put in the specification. 13 Q. Why do you say there is not a one-to-one 14 correspondence to what is disclosed in the 15 specification? 16 A. Well, there could have been differences. 17 They could have -- they might have never 18 prototyped this thing with exactly these dimensions. 19 They might have changed parameters. You know, they 20 are not exactly the same thing. 21 You asked him about his model, which 22 meant this thing that existed. You asked him if he 23 ran it in a particular way. So that's a lot narrower 24 question than if you took the device described in the</p>
<p style="text-align: right;">Page 158</p> <p>1 opinion that the inventors conceived of a system in 2 which the cradle received but did not retain cleaning 3 fluid? 4 A. No. 5 Q. Why not? 6 A. Well, the question asks: Did you test the 7 system? So you already got the system in a situation 8 where the cradle was not filled with fluid at all. 9 Okay. Then you rephrased the question. 10 The situation was no fluid retained in the cradle 11 system. You are asking him whether he took his 12 system and ran it without cleaning fluid retained, 13 and he said: Well, that wouldn't work. 14 Q. Let me see if I understand. Would you agree 15 with me that the -- let me start again. 16 Would you agree with me that in the 17 preferred embodiment of the cleaning system of the 18 '328 patent if the cradle structure does not retain 19 fluid, the cleaning device will not work; i.e., 20 clean? 21 MS. WENDLANDT: Objection. 22 A. So you asked me that question before, and I 23 answered that it would depend on where the fluid is 24 delivered to that area and details of how the cradle</p>	<p style="text-align: right;">Page 160</p> <p>1 patent and tried to run it without such things, 2 right. 3 Q. Let me ask you about the question at the top 4 of Page 74 -- 5 A. Uh-huh. 6 Q. -- where it states there, "Well, in your 7 work, did you ever attempt to develop a cleaning 8 system in which the shaver was sprayed with cleaning 9 fluid rather than being bathed?" "Answer: No." 10 "In your work at Braun, did you think of 11 the idea of pumping fluid into the interior of the 12 shaving head to flush out hair?" "Answer: To pump 13 fluid into the shaver, this could not be." 14 Do you see that? 15 A. Yeah. Yeah. You had completely confused 16 him. 17 He is saying pumping fluid into the 18 shaver, not the shaver head. He said you do not want 19 to clean the whole shaver. We just want to clean the 20 cutting head. 21 So, all those preclude questions were 22 confused. 23 Q. Would you look a little further down, where 24 it says, "What I meant is, did you ever think of</p>

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<p style="text-align: right;">Page 161</p> <p>1 pumping fluid directly into the shaver head to flush 2 out hair?" 3 A. Right. 4 Q. "Answer: But we found out if the trough was 5 not filled high enough, the level of fluid was too 6 low to cover the cutting head, the result was no so 7 good." 8 Do you see that? 9 A. You asked him if he ever thought of 10 something. He told you what he found. 11 Again, it's not -- so the way I read that 12 -- so I don't see this as indicating they had never 13 conceived of this thing of not retaining fluid. 14 I should also mention your question at 15 Line 3, you asked, "Did you ever attempt to develop a 16 cleaning system?" He said, "No." 17 Okay. They didn't attempt to develop 18 such a system. Early on they decided they preferred 19 the other system. 20 Q. And you're basing that on the inferences you 21 draw from Dr. Pahl testimony, correct? 22 A. I think all three things: Dr. Pahl, 23 Mr. Braun, the original application, all of those 24 things.</p>	<p style="text-align: right;">Page 163</p> <p>1 the use of an alcohol-based cleaning fluid." 2 Do you see that? 3 A. Yes. 4 Q. Do you agree that the '328 patent does not 5 explicitly state that an alcohol-based cleaning 6 solution should be used? 7 A. Correct. 8 Q. So it is your opinion that it would be 9 obvious to use an alcohol-based cleaning system? 10 MS. WENDLANDT: Objection. 11 Q. Cleaning solution? 12 MS. WENDLANDT: Objection. 13 Q. Fluid? 14 MS. WENDLANDT: Same objection. 15 MR. SHIMOTA: Sure. 16 A. I am not sure I should say the word 17 "obvious," which has all sorts of implications, but I 18 would say that it certainly -- it certainly would be 19 on the short list of things suggested to you when you 20 said "fat-dissolving cleaning fluid." 21 Q. What would be on the short list? 22 A. So alcohols, kerosene and related substances 23 like naphtha, acetone; and then what I am saying here 24 is that one would not want to use one of these</p>
<p style="text-align: right;">Page 162</p> <p>1 Q. Let's put the chronology together. 2 So you think Dr. Pahl thought of it 3 first? 4 MS. WENDLANDT: Objection. 5 Q. How do you think this chronology took place 6 then? 7 MS. WENDLANDT: Objection. 8 A. I am not sure I can answer any of this. 9 I think you have all of this deposition 10 testimony, which is the only thing I have seen as to 11 trying to give you chronology, and you have the 12 patent application. 13 So I'm in no position, you know, to 14 create a timeline. I don't think there is enough 15 temporal information in here to do so. It probably 16 wouldn't be my place, anyways. 17 Q. Okay. Fair enough. 18 Your opinions regarding best mode on Page 19 28, if you would, at the bottom you state, "Among" 20 the last paragraph, second sentence, you state, 21 "Among the most widely used fat solvents, especially 22 in consumer applications, are alcohols, and 23 therefore, the phrase 'fat-dissolving cleaning fluid' 24 would immediately suggest to one skilled in the art</p>	<p style="text-align: right;">Page 164</p> <p>1 kerosenes or naphthas in a consumer product in a 2 house or acetone. 3 So that's what I meant when I said your 4 first choice immediately would be to use alcohol. 5 Q. Okay. Turning to the next page, you discuss 6 the lubricant. 7 Would you agree with me that the '328 8 patent says nothing explicitly about the use of a 9 lubricant in the cleaning fluid? 10 A. Correct. 11 Q. Would you agree with me that the addition of 12 a lubricant to a cleaning fluid would affect its 13 viscosity? 14 A. I'm not sure whether it would have a 15 significant effect or not on the viscosity. 16 Q. Okay. Well, you -- I don't want to use the 17 word "obvious" then. 18 You suggest that it would be clear to one 19 of ordinary skill in the art that you would want to 20 include a lubricant in the cleaning fluid; is that 21 correct? 22 A. That's a paraphrase of what I said, so yes. 23 Q. Have I stated your opinion inaccurately? 24 A. Well, I would just say that one of ordinary</p>

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<p style="text-align: right;">Page 165</p> <p>1 skill in the art would recognize that a lubricant 2 isn't important for the cleaning function, but rather 3 for the maintenance of the shaving head. So there 4 might be a distinction there if you just interested 5 in cleaning the thing.</p> <p>6 Q. Okay. Is it fair to say -- well, one of 7 skill in the art would recognize the need to use a 8 lubricant, but they would not necessarily recognize 9 the need to put the lubricant in the cleaning fluid; 10 is that fair?</p> <p>11 A. So, yes, one could imagine you have a 12 cleaning device, and you tell the user when he pulls 13 it out to apply some oil.</p> <p>14 Q. And next you also state there are several 15 reasons that a low viscosity cleaning fluid is 16 desirable. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Would you agree with me that the '328 patent 19 does not explicitly state that a low viscosity 20 cleaning fluid is desirable?</p> <p>21 A. Correct.</p> <p>22 Q. So it is your opinion that it would be clear 23 to the one of ordinary skill in the art that a low 24 viscosity cleaning fluid would be desirable?</p>	<p style="text-align: right;">Page 167</p> <p>1 Phillips report. 2 Q. Is it your opinion that that presentation 3 shows a heater? 4 MS. WENDLANDT: Objection. 5 A. I don't remember what was in that 6 presentation. 7 MR. SHIMOTA: Dalila, our guys forgot to 8 make copies. If I could just show him that 9 presentation. 10 MS. WENDLANDT: Okay. 11 A. What I say here is Mr. Hoeser testifies that 12 that presentation illustrates the fan -- the heater 13 and fan. That is what I quoted. 14 Q. I will like to know if you agree with that. 15 A. Okay. I would have to look at that. 16 Do you guys have the translation? 17 Q. Just from the drawing. 18 A. I can't tell you what is what on that 19 drawing. 20 Q. From the drawing, you can't tell me if there 21 is a heater included in this? 22 A. I am hard-pressed to read this drawing here. 23 Q. So the answer is no? 24 A. Which question?</p>
<p style="text-align: right;">Page 166</p> <p>1 A. Well, yes. And how low would be depend on 2 your designing pumps, your designing filters. 3 In order to use a reasonable pump, 4 reasonable filter, you start optimizing parameters. 5 You would discover -- probably, I didn't do the 6 numbers -- that viscosity was important. 7 Q. And, finally, you render an opinion regarding 8 the fragrance of the cleaning fluid? 9 A. Right. 10 Q. Would you agree that the '328 patent 11 specification does not explicitly say anything about 12 the addition of a fragrance to the cleaning fluid? 13 A. Correct. 14 Q. So am I correct that it is your opinion that 15 it would be clear to one of ordinary skill in the art 16 that you should use a fragrance in the cleaning 17 fluid? 18 A. Yes. 19 Q. Under the inventorship for Mr. Smetana, you 20 note a November 1992 presentation by Dr. Pahl. 21 A. Yes. 22 Q. Have you seen this presentation? 23 A. I believe so. It was in an exhibit to -- I 24 believe it was one of the exhibits attached to the</p>	<p style="text-align: right;">Page 168</p> <p>1 Q. Based on the drawing, can you point a heater, 2 to me, out? 3 A. I can't point out a heater. 4 Q. Okay. Turning next to Claim 13, the next 5 paragraph under inventorship. You state that "The 6 use of heat to speed drying was well-known to the 7 ordinary artisan prior to Mr. Smetana's involvement 8 in the cleaning device." 9 Do you see that? 10 A. Yes. 11 Q. Is it your opinion that the Claim 13 of the 12 '328 patent is obvious? 13 Let me ask this: Is it your opinion that 14 the additional element of a heater in Claim 13 of the 15 '328 patent is obvious? 16 MS. WENDLANDT: Objection. 17 A. No. 18 Q. Why not? 19 A. Simply knowing that a heater is useful to dry 20 things doesn't get you to the invention of a device 21 that incorporates a heater into the cleaning device 22 in a practical way. 23 Q. So it is your opinion that whoever came up 24 with the idea of incorporating the heater, that</p>

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<p style="text-align: right;">Page 169</p> <p>1 person was an inventor, or that person needed to 2 undertake some type of inventiveness; is that right? 3 MS. WENDLANDT: Objection. 4 A. So I said it was not obvious to include a 5 heater. The person who came up with that would be an 6 inventor, yes. 7 Q. If I could direct your attention back to the 8 '328 patent which is -- 9 A. I am not sure I have copy. 10 Yes. At the very bottom of my stack, 11 yes. 12 Q. If you look it Column 6 of the '328 patent, 13 approximately Line 22, it states, "The clinging 14 device 5, in particular, the wet portion thereof, 15 that is the cradle 7." It goes on. 16 Do you see that? 17 A. Uh-huh. 18 Q. Do you have any understanding of what is 19 meant by the use of the term "the wet portion"? 20 A. So the portion that comes into contact with 21 cleaning fluid. 22 That's not saying that it's the only 23 thing in the cleaning device that comes into contact 24 with the cleaning fluid since clearly the tank is a</p>	<p style="text-align: right;">Page 171</p> <p>1 cradle is kept full, and that's he is saying here. 2 Q. He is talking about the dimensions of the 3 outlet port, correct? 4 A. Yes. 5 Q. Am I wrong in saying that is saying the exact 6 same thing as what is stated in Claim 2? 7 A. Claim 2 is stating -- yeah, Claim 2 is 8 claiming specifically that element, yes. 9 Q. Grab your first report real quick. 10 If I look what is behind B, Tab B of your 11 report, your exhibits, photographs of the Rayovac 12 devices. 13 A. Yes. 14 Q. 3A is the manifold of the Rayovac device; is 15 that correct? 16 A. Yes. 17 Q. What is the shape of the manifold in 18 Rayovac's device? 19 A. In this particular device, since -- 20 Q. Sure. Let's start with the R 9500., 21 A. That's a good question. Hard to put into 22 words. 23 It's a -- if you look at it from the top, 24 it's like two legs, plus some curves of a triangle.</p>
<p style="text-align: right;">Page 170</p> <p>1 wet portion. 2 Q. Sure. 3 A. But it's pointing you to towards that most of 4 the cradle -- he is describing the cradle as the wet 5 portion. 6 Q. So is it fair to say that the patent does 7 describe the cradle as getting wet during cleaning? 8 MS. WENDLANDT: Objection. 9 A. So he is saying that the wet portion is 10 synonymous with the cradle. 11 Q. Okay. Look at Column 6, about Line 44, where 12 it states that "The outlet port 27 is dimensioned 13 such that cradle 7, when supplied with cleaning fluid 14 from a pump 23, described in the following, rather 15 than be allowed to run empty, is at all times filled 16 to the rim, with excess cleaning fluid being manually 17 discharged over the rim of the cradle," and it goes 18 on. 19 Do you see that? 20 A. Yes. 21 Q. How is that description any different than 22 what you referred to previously about Claim 2 of the 23 '328 patent that we discussed earlier? 24 A. Different? Well, in this embodiment, the</p>	<p style="text-align: right;">Page 172</p> <p>1 MR. SHIMOTA: Would you mark as 2 Defendant's Exhibit 162 a sheet of paper. 3 Q. And ask if you could to draw the shaft of the 4 manifold, if you would, please. 5 EXHIBIT NO. 162 MARKED 6 A. So you would like a top view? 7 Q. Sure, please. 8 A. (Witness drawing.) 9 Do you want more detail? 10 Q. No, that's fine. 11 Does the manifold that you call 3A or 12 that you designate as 3A in the R 9500 make contact 13 with the shaver at all, shaver head? 14 A. Its ports do. So 3B does, but 3A itself 15 would not normally. 16 Q. Well, you distinguish between 3A and 3B? 17 MS. WENDLANDT: Objection. 18 A. Yes. If you would like me to continue with 19 that distinction, 3A normally would not. 20 Q. When you say "normally would not," can you 21 think of -- are you thinking of some situation where 22 it would? 23 A. If you were to push the razor while it is in 24 there, and you deflect that manifold enough that it</p>

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<p style="text-align: right;">Page 173</p> <p>1 probably would touch. 2 Q. Okay. So if you use the -- if a user 3 mishandled the Rayovac device, it might come into 4 contact with the manifold? 5 MS. WENDLANDT: Objection. 6 A. Yes. 7 Q. That's one possibility? 8 A. Yes. 9 Q. But normally there would be no contact 10 between the manifold 3A and the shaver head? 11 A. Correct. 12 Q. Okay. You, also in your drawing, there are 13 the ports, 3B? 14 A. Yes. 15 Q. Do you see those? Do the ports 3B retain 16 cleaning fluid? 17 A. Yes. During the feed operation, they are 18 full of cleaning fluid. 19 Q. So, in your opinion, retention of cleaning 20 fluid requires that the ports be full? 21 A. No. 22 MS. WENDLANDT: Objection. 23 A. Just that they hold some volume of the 24 cleaning fluid. That they are full implies that they</p>	<p style="text-align: right;">Page 175</p> <p>1 retain cleaning fluid? 2 A. They receive. They get wet. 3 Q. But they do not retain cleaning fluid? 4 A. No. 5 Q. Had you tested Rayovac's products to 6 determine that the supporting surfaces receive 7 cleaning fluids? 8 A. Yeah. I ran them several times, and they did 9 get wet. 10 Q. Does the shape -- let me ask you. 11 EXHIBITS NOS. 163 AND 164 MARKED 12 MR. SHIMOTA: And 164, an exhibit for 13 the women's rotary product; 163, an exhibit for the 14 men's rotary product. 15 Q. Would you please draw the manifold for both 16 -- the bird's eye view for the men's foil and the 17 women's foil? 18 A. So the men's foil is R 5500? And R 5700? 19 Q. Yes. 20 MS. WENDLANDT: I think it's actually 21 MS. 22 MR. SHIMOTA: You're right. That's 23 fine. 24 MS. WENDLANDT: Just note for the</p>
<p style="text-align: right;">Page 174</p> <p>1 are retaining. 2 Q. I assume it's also your opinion that the 3 ports also receive cleaning fluid, too? 4 A. Yes. 5 Q. If you look at your drawing -- I don't have 6 it here -- in the drawing of the cleaning center, 7 there is a bottom in the opening for -- there is a 8 base at the bottom of the base. 9 Do you see that lower surface, that lower 10 plane? 11 A. Which drawing? 12 Q. The photo. This surface at the bottom 13 (indicating)? 14 A. Yes. 15 Q. You don't opine that that lower surface is 16 part of the cradle structure, do you? 17 A. If I could take a moment, please. 18 Q. Sure. 19 A. Right. 20 Q. Turning back -- you are back at the picture, 21 but you also opine that the supporting surface 3C is 22 part of the cradle structure; is that correct? 23 A. Yes. 24 Q. Do the supporting surfaces 3C receive or</p>	<p style="text-align: right;">Page 176</p> <p>1 record Dr. Nayfeh is doing this based -- he is 2 looking at the drawings and memory. The device is 3 not before him. 4 MR. SHIMOTA: That's fine. 5 A. (Witness drawing.) That's the (indicating), 6 okay. 7 Q. Now, in the men's foil product, does the 8 manifold make contact with the shaving head? 9 A. I don't recall if it does. I can't tell from 10 the photos. I don't remember. 11 Q. Did you consider that question? 12 A. I don't think so. 13 Q. So I would presume that opinion is not 14 expressed in your expert report? 15 A. I don't think I said that the manifold 16 contacts or doesn't contact the shaving head. 17 I could be forgetting, but I don't 18 remember having said that. 19 Q. In the women's product, does the manifold 20 contact the shaver head? 21 A. Same answer. I'm not sure if it does or 22 doesn't. 23 Q. Turning back not rotary product. In the 24 Rayovac rotary product, does the manifold 3A receive</p>

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<p style="text-align: right;">Page 177</p> <p>1 or support the shaving head? 2 A. Yes. 3 Q. How does it do so without making contact with 4 the shaver head? 5 A. It's integral with the structures 3B. 6 So if you are looking for the structure 7 that supports it, we are looking at the manifold with 8 ports 3B that contact the shaving head, but that's 9 certainly all part of the framework that supports the 10 shaving head. It's all part of the structure that 11 supports the shaving head. 12 Q. So the manifold indirectly supports the 13 shaving head? 14 MS. WENDLANDT: Objection. 15 A. Well, I am not sure I like that 16 characterization. 17 We looked for the structure that provides 18 the support and don't just look at a surface that 19 provides the support, but rather the structure that 20 provides the support. 21 So I think one skilled in the art would 22 definitely read the structure as including not just 23 the ports, but that piece of plastic to which the 24 ports are, you know, integral, and through which the</p>	<p style="text-align: right;">Page 179</p> <p>1 embodiment? 2 A. I'm not sure how to answer that. Do you want 3 a list? 4 Q. Well, to the extent you have an answer, I 5 would like to know what your answer -- answers are. 6 A. Some things that have already been pointed 7 out, I think. 8 The conduits analogous to the manifolds 9 in the patent embodiment are -- don't bear any load. 10 They are distinct from the cradle structure. Whereas 11 here they are integrated into the cradle structure or 12 somewhat integrated. 13 You have in this case several discrete 14 points of contact. Whereas in the specification, 15 that embodiment, there is sort of one compliant pad 16 against which the thing rests in the cradle 17 structure. 18 Q. Do you know of any other differences? 19 A. One could come up with others. I don't know 20 what you're looking for in particular. 21 Q. Okay. How do you know that the conduit 64 in 22 the '328 patent don't bear any load? 23 A. Well, they're drawn as a distinct structure 24 from the cradle structure.</p>
<p style="text-align: right;">Page 178</p> <p>1 load is transmitted. 2 Q. Okay. Why, then, if you were just looking 3 for what provides the shaver support, why didn't you 4 look to what you labeled as the upper housing 10? 5 Why isn't that part of the cradle structure? 6 MS. WENDLANDT: Objection. Go ahead. 7 A. Well, you have this whole device, and it is 8 sitting on the table down to the ground, and so we 9 look for the portion of the structure that's adapted 10 specifically to receive the shaving head, as in the 11 specification, we see that the cradle structure is 12 not the entire cleaning system, not the whole 13 housing, but that structure local to the support 14 bears the load that is adapted to receive the shaving 15 head. 16 Q. So the cradle structure bears the entire load 17 of the shaving head? 18 A. No. Some of the load is carried by the 19 bracket. 20 Q. What differences do you see between the -- if 21 any, between the design of the -- oh, what 22 differences do you see of the design, what you 23 classify as the cradle structure in Rayovac's device 24 and the cradle structure in Braun's preferred</p>	<p style="text-align: right;">Page 180</p> <p>1 I shouldn't say: Think don't bear any 2 load. I should say they don't directly or they are 3 not part of the -- they are not part of the component 4 of the cleaning system that is adapted to support the 5 shaving head. 6 Q. How can you -- you can tell that from the 7 drawing, Figure 6 in the '328 patent? 8 A. Well, that's a very schematic drawing, and it 9 implies that it is -- to the extent we are going to 10 deduce structure from this schematic, that would 11 imply it doesn't -- you know, it doesn't -- it's 12 quite distinct from the cradle structure and the -- 13 doesn't play a role in providing support. 14 Q. So am I correct that you can't tell from the 15 '328 patent whether or not the conduit 64 bear any of 16 the load of the shaver head? 17 A. I don't want to use the phrase "bear any 18 load." 19 Q. Okay. 20 A. The -- put it this way: There is no 21 indication that it should bear any load, and I don't 22 know if there are any drawings in which it is shown 23 in more detail, but there is no indication that it 24 should, and then from the reading of the patent you</p>

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<p>1 don't see any suggestion that it should.</p> <p>2 Q. Okay. I think you also say that another</p> <p>3 difference is that in the '328 patent, I guess the</p> <p>4 cradle structure is one discrete part, whereas in</p> <p>5 Rayovac's -- well, let me see if this is a fair</p> <p>6 characterization of your testimony.</p> <p>7 You state that in the '328 patent the</p> <p>8 cradle structure is one discrete part whereas in the</p> <p>9 Rayovac device the cradle structure is several</p> <p>10 structures which together make up a cradle?</p> <p>11 A. Oh, no. That wasn't my point at all.</p> <p>12 Q. Okay.</p> <p>13 A. What I meant to say is that it supports the</p> <p>14 shaving head at several discrete points -- several</p> <p>15 discrete points of contact, we could say.</p> <p>16 Whereas the cradle in the, say, Figure 1</p> <p>17 of the '328 patent, it doesn't really -- in fact,</p> <p>18 there is this compliant pad, which is there between</p> <p>19 the cradle structure and the shaving head and there</p> <p>20 is one contact patch.</p> <p>21 Q. You would agree with me another difference is</p> <p>22 that in at least Braun's preferred embodiment the</p> <p>23 shaving head is immersed in cleaning fluid, whereas</p> <p>24 in the Rayovac's device there is no immersion of the</p>	<p>Page 181</p> <p>1 question: Do you whether the supporting surfaces</p> <p>2 gets wet? Is: I don't know?</p> <p>3 A. I don't know.</p> <p>4 Q. Do you know whether the supporting surfaces</p> <p>5 get wet, the supporting surface 3C gets wet in the</p> <p>6 women's device?</p> <p>7 A. The same answer.</p> <p>8 Q. And turning back to the rotary device, do all</p> <p>9 of the supporting surfaces of 3C get wet, or are you</p> <p>10 referring to that middle nub?</p> <p>11 A. I think I had previously indicated to you</p> <p>12 that the ribs or gussets do get wet. I just remember</p> <p>13 that.</p> <p>14 I don't remember if the middle</p> <p>15 cylindrical provision does or does not get wet, or</p> <p>16 whether it entirely gets wet or not.</p> <p>17 Q. So it is your testimony that the ribs do not</p> <p>18 get wet, and also you don't remember whether the nub</p> <p>19 in the middle gets wet?</p> <p>20 A. Yes. At least in the trials that I ran.</p> <p>21 Q. Turn to Page 5 of your first report.</p> <p>22 In the paragraph where you are discussing</p> <p>23 the open to the atmosphere, about the second-to-last</p> <p>24 sentence, you state, "This arrangement eliminates the</p>
<p>Page 182</p> <p>1 shaver head in cleaning fluid?</p> <p>2 MS. WENDLANDT: Objection.</p> <p>3 A. You are comparing the preferred embodiment?</p> <p>4 Q. Yes.</p> <p>5 A. In the preferred embodiment, there is</p> <p>6 immersion. In the Rayovac device, it is not</p> <p>7 immersed.</p> <p>8 Q. Do you have any opinion as to which of the</p> <p>9 two cleaning methods, immersion versus nonimmersion,</p> <p>10 is more efficient?</p> <p>11 A. I haven't formed an opinion on that.</p> <p>12 Q. In the men's foil device, do the supporting</p> <p>13 surfaces 3C -- or in the men's rotary -- in the men's</p> <p>14 foil devices, do the supporting surfaces 3C receive</p> <p>15 cleaning fluid?</p> <p>16 A. I can't say for sure. I can't recall if they</p> <p>17 got wet or not.</p> <p>18 Q. Is that something that you considered?</p> <p>19 A. Well, it wasn't important to -- it was not</p> <p>20 something that -- I don't believe it is in the</p> <p>21 report, and I don't think I went about systematically</p> <p>22 trying to find out whether or not they get wet.</p> <p>23 So I guess I did not consider it really.</p> <p>24 Q. So the answer to my question -- my original</p>	<p>Page 184</p> <p>1 need to provide an elaborate seal around the cradle</p> <p>2 structure."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. So is it your opinion that Claim 14 -- I</p> <p>6 think I discussed this before.</p> <p>7 What do you mean by "an elaborate seal"?</p> <p>8 A. Well, I was paraphrasing, I think the</p> <p>9 specification, and I can't seem to find it here, but</p> <p>10 as I recall, they were trying to draw a distinction</p> <p>11 between the present invention and the previous</p> <p>12 inventions that did require such a seal.</p> <p>13 Q. Okay. So, again, is it your opinion that the</p> <p>14 "permanently open towards the atmosphere" language</p> <p>15 requires that the cradle structure be unsealed?</p> <p>16 A. Yes.</p> <p>17 Q. Is the manifold in the Rayovac's products</p> <p>18 sealed or unsealed?</p> <p>19 A. Unsealed.</p> <p>20 Q. And are the ports in Rayovac's device sealed</p> <p>21 or unsealed?</p> <p>22 A. Unsealed.</p> <p>23 Q. The same is true of the supporting</p> <p>24 structures?</p>

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<p style="text-align: right;">Page 185</p> <p>1 A. Correct. 2 Q. Now, when the manifold is filled with fluid 3 during feeding, is the manifold open to the air? 4 A. Yes. 5 Q. In what way? Why do you say that? 6 A. So in the sense used in the patent "open to 7 air" again implies you can take a shaver in and out 8 without closing otherwise, right? So you are open to 9 the air. 10 And you haven't -- the business of 11 requiring the seals is about -- you are not providing 12 a secondary seal that would have to be removed when 13 you --- I shouldn't say the word "secondary." 14 You are not using a seal around the 15 shaving head to prevent anything from escaping around 16 the shaving head during the cleaning operation. 17 Q. So would you agree with me that during 18 feeding -- the ports on the manifold are distinct, in 19 your opinion, or are different or at least separately 20 identifiable structures? 21 A. Well, the ports are features that we can 22 identify. I don't want to say "separate structure." 23 It's a question of interpretation, I guess. 24 Q. So during the feeding you have fluid going</p>	<p style="text-align: right;">Page 187</p> <p>1 displacing air, right, in the razor, and so you would 2 have to say this thing is open to the air, either 3 directly, because of these gaps, or because the razor 4 itself is open to atmosphere. 5 Although, I would say that -- well, I 6 shouldn't keep talking. 7 Q. Well, I guess -- and this is where I am 8 confused, because the -- I mean, how is the -- in the 9 Davies patent where air is allowed into the device, 10 how is that any -- how is that any less open to the 11 air than the manifold when it is filled with fluid? 12 A. So the thing I was about to say is that this 13 is all a digression, because our understanding of 14 "open to the atmosphere" is open so you can pull in 15 and take out a razor. 16 Q. Essentially, then, "open to the atmosphere" 17 means no lid? 18 A. I would hate to create equivalence. 19 I think that that is a phrase from the 20 patent, you could say, from the specification in this 21 case. 22 It makes sense, but I don't want to 23 create -- I don't just want to create a 24 generalization that it means no lid.</p>
<p style="text-align: right;">Page 186</p> <p>1 from the cleaning fluid container through the pump 2 into the manifold, and then onto the ports, and then 3 into the shaving head, is that correct -- 4 A. Yes. 5 Q. -- in the Rayovac's device? 6 So when that is occurring, you think that 7 the fluid or the manifold is open towards the air? 8 A. Well, sure. It's pumping fluid through the 9 ports. 10 I think there is some leakage around the 11 ports. At one port or two ports you often find a 12 little opening, a gap between the port and razor. 13 You are using the jet. There is clearly 14 gaps. So, for example, in the -- in this one 15 (indicating), there is a port -- is it okay if I add 16 to the sketch? 17 Q. Sure. 18 A. If there is port at the edge of this inverted 19 V and ports here (indicating), and when you are 20 running it, there is a gap between this port 21 (indicating) and the razor. It is open in that 22 sense. 23 Second, as you are pumping liquid into 24 here (indicating), it goes into the razor. It is</p>	<p style="text-align: right;">Page 188</p> <p>1 The "open to the atmosphere" we said 2 means you can take the razor in and out without 3 opening and closing stuff, and that's certainly true 4 of these cradle structures. 5 Q. Okay. So, I mean, does that -- how does that 6 really have anything to do at all with being open to 7 the air or not? I mean, you could have a cover for a 8 cradle structure, and it would be open to the air? 9 It wouldn't be hermetically sealed; isn't that right? 10 A. So, remember, the claim languages says, "open 11 to the atmosphere." 12 So "atmosphere" we are taking as the 13 exterior of the cleaning system; and open to that, as 14 explained in the specification, means that you can 15 put the razor in, take it out, without opening or 16 closing lids. 17 That seems -- in other words, that seems 18 to be the story. I am not sure what the question is. 19 Q. Well, I mean, I guess my question is, isn't 20 that "open towards atmosphere" a rather awkward way 21 to say "cradle that is easy to insert and remove 22 shaver"? 23 MS. WENDLANDT: Objection. 24 A. Well, they are not exactly synonymous.</p>

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<p style="text-align: right;">Page 189</p> <p>1 In other words, "easy to insert and 2 receive" could be a lot of things. It could be I 3 have a cover, but I make it a nice cover that feels 4 good to the user to open and close.</p> <p>5 "Open to atmosphere" says no cover, at 6 least in these examples.</p> <p>7 Q. Okay. So I take it you disagree with 8 Mr. Phillips that the manifold, for example, is open 9 to the air when it is filled with fluid?</p> <p>10 MS. WENDLANDT: Objection.</p> <p>11 A. I can't quite answer that. You would have to 12 show me specifically what I am disagreeing with.</p> <p>13 Q. Okay. We will get to that in a second.</p> <p>14 On the next page, on 6, where you are 15 talking about permanently open to the air, you say 16 that no elaborate seal is provided in your analysis 17 of the Remmington shaving systems?</p> <p>18 A. Right. Yes.</p> <p>19 Q. Is there any requirement -- does the language 20 of Claim 14 "permanently open towards the 21 atmosphere," does that have anything to do with 22 elaborate seals or not?</p> <p>23 A. You can think of closing this thing off from 24 the atmosphere in two ways: One, by providing a</p>	<p style="text-align: right;">Page 191</p> <p>1 correct?</p> <p>2 A. The basin, which I don't think I numbered, 3 but the basin beneath which the shaver rests, fluid 4 is -- reaches it through the razor.</p> <p>5 Well, aside from whatever might leak out 6 throughout the ports, but essentially the shaving 7 head.</p> <p>8 Q. Fluid drains out by the force of gravity?</p> <p>9 A. Predominately. There would be others, yes.</p> <p>10 Q. That's how fluid reaches the supporting 11 surfaces 3C, if at all; is that correct?</p> <p>12 A. Okay. The surface is 3C, yeah.</p> <p>13 I should say it may not be all through 14 the force of gravity. In other words, when you shoot 15 these streams into the shaving head, you probably 16 still have some momentum -- didn't look inside to 17 see what was going on -- and probably as you fill it 18 up, you start developing a pressure.</p> <p>19 It wouldn't, say, be necessarily, uhm, 20 just due to gravity.</p> <p>21 Q. But the fluid goes to the shaving head first 22 and then to the supporting surfaces 3C in the case of 23 the 9500?</p> <p>24 A. Mostly, unless there are leaks around the</p>
<p style="text-align: right;">Page 190</p> <p>1 door, so with seals or not. The other -- and I need 2 to reread the specification here.</p> <p>3 So I really was paraphrasing, if you look 4 at Column 2, say, Line 49, "This enables the shaving 5 apparatus to be inserted into the cradle without any 6 effort and to be withdrawn therefrom without the need 7 to utilize any parts closing the cradle. Moreover, 8 this arrangement obviates the provision of an 9 elaborate seal, enabling an economical cleaning 10 device to be built, affording substantially greater 11 operating comfort than the cleaning system known in 12 the art."</p> <p>13 Q. Okay.</p> <p>14 A. Uhm.</p> <p>15 Q. Turning back again to the operation of 16 Rayovac's devices.</p> <p>17 When fluid is fed, it's fed to the 18 manifold, and then to the ports, and then inside the 19 shaver head; is that right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Fluid is not this -- we looked at one 22 of your pictures for the R 9500.</p> <p>23 Fluid is not fed from the feed device to 24 the interior of that bowl or that basin; is that</p>	<p style="text-align: right;">Page 192</p> <p>1 ports.</p> <p>2 Q. So fluid does not go from the cleaning fluid 3 container to the supporting surfaces 3C directly; is 4 that correct?</p> <p>5 A. As we discussed, it is shot into, or at, at 6 least, the shaving head, and then makes it way down 7 there and possibly gets those wet.</p> <p>8 MR. SHIMOTA: Why don't we take a brief 9 break.</p> <p>10 THE VIDEOGRAPHER: Going off the record. 11 The time is 3:37.</p> <p>12 (A recess was taken.)</p> <p>13 THE VIDEOGRAPHER: One moment. We are 14 back on the record. The time is 3:46.</p> <p>15 Q. We were talking a little bit about 16 infringement.</p> <p>17 I know you offered opinions with respect 18 to literal infringement; is that correct?</p> <p>19 A. You might want to clarify what you mean.</p> <p>20 Q. Sure. Are you familiar with the term the 21 "doctrine of equivalence"? Have you ever encountered 22 that before?</p> <p>23 A. I have read about it a bit, but I haven't 24 done any detailed opinions on that.</p>

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<p style="text-align: right;">Page 193</p> <p>1 Q. So I take it you have not offered any 2 opinions that Rayovac's devices infringe under the 3 doctrine of equivalence; is that correct? 4 A. I don't think so. 5 Q. In your reports, do you offer any -- well, do 6 you offer any opinion, assuming that the court 7 modifies its "cradle structure" construction as 8 suggested by Mr. Phillips and now Rayovac? 9 MS. WENDLANDT: Opinion as to? 10 Q. Opinion as to infringing -- infringement -- 11 let me rephrase that question. 12 In your reports, is there any opinion 13 offered as to whether or not Rayovac's devices 14 infringe, if the court's "cradle" construction is 15 modified as suggested by Mr. Phillips? 16 A. The only modification being to require 17 receive and retain? 18 Q. Yes. 19 A. I don't think I have offered an opinion on 20 that, as I recall. 21 Q. Okay. So that opinion would not be found in 22 either your first or your third expert report? 23 A. I don't think so. 24 Q. Okay.</p>	<p style="text-align: right;">Page 195</p> <p>1 the time it began making its first infringing devices 2 in the fall of 2003." 3 Do you see that? 4 A. Yes. 5 Q. Why do you think that fact is 6 significant? 7 A. Well, just my understanding that that the 8 substitutes would have had to have been available at 9 the time that the infringement occurred. 10 Q. Okay. Do you understand that in assessing 11 whether substitutes would be available you are to 12 assume that Rayovac knew that it wouldn't be able to 13 sell devices as are currently configured? Rayovac 14 had that information available to it? 15 A. We would assume that Rayovac knew that it was 16 infringing on a valid patent. 17 Q. Knew that it could not -- 18 A. Okay. Uhm, I didn't know that. 19 Q. Okay. You refer to on Page 14 a passive 20 drying. Do you see that? 21 A. Right. 22 Q. I believe you state, "There is no reason to 23 believe" -- at the end of the first paragraph -- 24 "Therefore, it would be acceptable to consumers now."</p>
<p style="text-align: right;">Page 194</p> <p>1 MR. SHIMOTA: I would like to mark 2 Defendant's Exhibit 165, your third expert report. 3 EXHIBIT NO. 165 MARKED 4 Q. And most specifically to Page 13, when you 5 talk about the substitutes. 6 MS. WENDLANDT: Just to clarify for the 7 record, mine has Jesse Davies report as well. 8 Should we take that out? 9 MR. SHIMOTA: Yes. 10 MS. WENDLANDT: Is that Page 62 of the 11 fax? 12 MR. SHIMOTA: Yes. We can do that. I'm 13 not going to ask you about it. We can do it off the 14 record. I guarantee you I won't ask you about that, 15 because I haven't read it closely. 16 Q. What is your -- what is the analytical 17 framework you applied for assessing whether 18 noninfringing -- acceptable noninfringing substitutes 19 were available to Rayovac? 20 A. I really just responded to what Mr. Phillips 21 had written. 22 Q. Okay. I am focusing on -- you make the 23 statement, and you have a prelude paragraph, and you 24 state, at the last sentence, "Or more importantly, at</p>	<p style="text-align: right;">Page 196</p> <p>1 This is passive drying. 2 Do you see that? 3 A. Yes. 4 Q. Are you aware that Braun currently sells a 5 cleaning system employing passive drying? 6 A. I read in one of the deposition -- I forgot 7 which -- that they did have such a product. 8 Q. It would have been the deposition of 9 Mr. Hoeser? 10 A. I'm not sure. 11 Q. So given the fact that the Braun has a 12 passive drying product on the market, is it your 13 opinion that consumers would not purchase a product 14 that employs passive drying? 15 MS. WENDLANDT: Objection. 16 A. It's not clear whether it would be successful 17 or has been successful. 18 I have no information that says it has 19 been successful or as successful with products with 20 drying. So that piece of data doesn't change the 21 analysis. 22 Q. Well, have you asked Braun? 23 A. No. 24 Q. Would you like to ask them. Would you want</p>

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<p style="text-align: right;">Page 197</p> <p>1 to know that information before stating that the 2 products could not be -- would not be acceptable to 3 consumers?</p> <p>4 MS. WENDLANDT: Objection.</p> <p>5 A. I said there is no reason to believe it was 6 acceptable.</p> <p>7 In other words, I wasn't -- I don't think 8 I said it is not acceptable. All I said is if 9 somebody wants to assert it would be just as 10 successful a product, they would have to back that 11 up.</p> <p>12 Q. Okay. So you're not offering affirmative 13 evidence that the product would not be successful or 14 would not be acceptable to consumers?</p> <p>15 A. Correct. I am only pointing out the lack of 16 evidence saying this it would be acceptable to the 17 consumer.</p> <p>18 Q. And you don't think the fact that Braun has 19 the product on the market is evidence it would be, at 20 least Braun thought it might be acceptable to 21 consumers?</p> <p>22 MS. WENDLANDT: Objection.</p> <p>23 A. That would be conjecture. Assume? Lots of 24 product fail. I mean, some succeed.</p>	<p style="text-align: right;">Page 199</p> <p>1 A. My knowledge of these is what I read in 2 Hoeser's deposition -- I believe it was Hoeser -- and 3 sort of advertisements and Web pages you come across, 4 but I hate to say anything like that, because I 5 didn't really study Braun's product line.</p> <p>6 Q. Let me ask this: Would it be your 7 expectation that consumers would pay more for a 8 device with an active drying system than they would 9 for a device with a passive drying system?</p> <p>10 MS. WENDLANDT: Objection.</p> <p>11 A. If that were the only difference between the 12 products?</p> <p>13 Q. Yes.</p> <p>14 A. I think an educated customer would want one 15 that dried faster, and I don't know how things are 16 marketed and presented to the customer, to say what 17 the customer might pay or not pay.</p> <p>18 Q. So you would assume that, all other things 19 being equal, Braun would charge more for a device 20 that has a dryer than one that does not?</p> <p>21 MS. WENDLANDT: Objection.</p> <p>22 A. I think market dynamics and business dynamics 23 can be counterintuitive. So I would not like to 24 offer comment on how they offer things.</p>
<p style="text-align: right;">Page 198</p> <p>1 Q. Well --</p> <p>2 A. Well, it doesn't prove such a product would 3 be acceptable.</p> <p>4 Q. Okay. So you don't know one way or the other 5 whether the products is acceptable?</p> <p>6 A. Correct. I only know that I have no evidence 7 to show that it is acceptable.</p> <p>8 Q. Would you assume -- are you aware that Braun 9 sells the cleaning bases without shavers in them, 10 separately?</p> <p>11 A. I don't recall reading that.</p> <p>12 Q. Okay. Would it surprise you that Braun sells 13 cleaning bases with and without dryers for exactly 14 the same price?</p> <p>15 MS. WENDLANDT: Objection.</p> <p>16 A. That they are exactly alike products, except 17 for the lack of the dryer, for the same price?</p> <p>18 Q. Well, you are aware that there are basically 19 three different types of cleaning bases that are 20 offered by Braun now: One, the old one with the 21 tower and the fan; the second, no tower, no dryer; 22 and the third, no tower induction heater? Are you 23 aware of that?</p> <p>24 MS. WENDLANDT: Objection.</p>	<p style="text-align: right;">Page 200</p> <p>1 Q. Well, is it fair to say -- I mean, you are 2 not really -- you don't have expertise in the area of 3 what consumers would or would not want in these types 4 of devices at issue in this litigation?</p> <p>5 MS. WENDLANDT: Objection.</p> <p>6 A. I am going here mostly on what I have read 7 in, say, Hoeser's or Pahl's or Braun's deposition.</p> <p>8 I am not an expert on the market for 9 personal shaving apparatus.</p> <p>10 Q. I assume at trial you won't offer any 11 opinions as to what consumers may or may not want in 12 a product?</p> <p>13 MS. WENDLANDT: Objection.</p> <p>14 A. I haven't thought about what will happen at 15 trial.</p> <p>16 Q. Well, I mean, do you ever envision yourself 17 in a situation where you held yourself out to a jury 18 as an expert in the marketing of what consumers would 19 and would not want in a product such as what we're 20 talking about in this litigation?</p> <p>21 A. I haven't envisioned it.</p> <p>22 For some types of products, I might feel 23 comfortable doing that. It's a very big 24 hypothetical.</p>

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<p style="text-align: right;">Page 201</p> <p>1 Q. Well, let's make it for these products, the 2 Rayovac and Braun products at issue in this 3 litigation.</p> <p>4 Would you feel comfortable providing 5 expert testimony as to the business dynamics for 6 these products, for the cleaning center products?</p> <p>7 A. I wouldn't envision doing that.</p> <p>8 Q. You seem to imply, based upon Mr. Chasen's 9 testimony, that drying time is critical for these 10 types of cleaning systems; is that correct?</p> <p>11 MS. WENDLANDT: Objection.</p> <p>12 A. I --</p> <p>13 Q. 14.</p> <p>14 A. I want to see who I quoted. I think various 15 people talked about that. But here I quote or 16 paraphrase Mr. Chasen saying that drying time was 17 critical, yes.</p> <p>18 Q. Do you agree with Mr. Chasen?</p> <p>19 MS. WENDLANDT: Objection.</p> <p>20 A. I don't have a basis for surveying, and I 21 don't think Mr. Chasen had a basis for asking or 22 answering the question of what market penetration 23 would be for a system that dried in various amounts 24 of time.</p>	<p style="text-align: right;">Page 203</p> <p>1 A. Again --</p> <p>2 MS. WENDLANDT: Objection.</p> <p>3 A. -- with the big disclaimer that I'm not an 4 expert, not providing my own opinions as to what the 5 consumer would want.</p> <p>6 Another example is your going to travel. 7 You shave. You clean your shave and then want to 8 pack it.</p> <p>9 I mean, most people are not systemic 10 enough that they could always expect to wait 24 11 hours.</p> <p>12 Q. I think you said, though, you are providing 13 this from intuition and you are guessing about 14 consumer's needs; is that correct?</p> <p>15 MS. WENDLANDT: Objection.</p> <p>16 A. Yes. I answered that question only to 17 provide a few examples, but I can't give numbers or 18 quantitative notions as to what -- how big a 19 difference it would make in the market.</p> <p>20 Q. Okay. In the second paragraph, it's just a 21 sentence, you state, "There is moreover no suggestion 22 by Mr. Phillips that Rayovac had considered such a 23 design either at past or in the -- either in the 24 presence or in the past."</p>
<p style="text-align: right;">Page 202</p> <p>1 It seems that Mr. Chasen, like Mr. Braun 2 and others, had the notion that the faster the thing 3 dried, the happier the customer would be, and they 4 designed and invented around that.</p> <p>5 Q. How often do you shave during a day?</p> <p>6 A. I may be a bad example. I shave maybe once a 7 week.</p> <p>8 Q. Say, for the user who shaves once a day, 9 would you agree with me it would be sufficient if the 10 razor dried within 24 hours --</p> <p>11 MS. WENDLANDT: Objection.</p> <p>12 Q. -- assuming you cleaned it every day, too?</p> <p>13 MS. WENDLANDT: Objection.</p> <p>14 A. First of all, I already said I don't -- I am 15 not providing my own intuitions here.</p> <p>16 If I were to provide a speculative 17 answer, you are assuming that people always remember 18 to clean after they shave, but it's quite possible 19 that somebody might fail to do that and then put it 20 into clean, you know, 20 minutes before he expects to 21 shave.</p> <p>22 Q. So for that user or subset of users that 23 would be unacceptable for people who use the device 24 as instructed, drying time wouldn't matter?</p>	<p style="text-align: right;">Page 204</p> <p>1 A. Correct.</p> <p>2 Q. Is it your belief that Rayovac lacks the 3 technical capability to take the fan out of its 4 cleaning device?</p> <p>5 MS. WENDLANDT: Objection.</p> <p>6 A. No.</p> <p>7 Q. I mean, you would agree it wouldn't require 8 -- it wouldn't be an engineering challenge to take 9 the fan out?</p> <p>10 MS. WENDLANDT: Objection.</p> <p>11 A. Not an engineering challenge. It would take 12 some time and work.</p> <p>13 Q. Would it require anything more than routine 14 engineering?</p> <p>15 A. Well, you again get to something vague. 16 I mean, if the question is whether you 17 could come up with this idea and describe how to do 18 it, but it seems to me the question Mr. Phillips was 19 addressing was from coming up with this idea to 20 getting your product on the market and in stores, and 21 there's a lot more to that than describing how you 22 were going to do this.</p> <p>23 Q. Okay. Let me ask you this question: Let's 24 assume that in the fall of 2003 the government came</p>

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<p style="text-align: right;">Page 205</p> <p>1 to Rayovac and said: You are not allowed to have a 2 dryer in your cleaning device. 3 Do you think it would have required much 4 engineering work for Rayovac to take the fans out of 5 its products at that time and sell a device that 6 employed passive drying? 7 A. Again, the term "much engineering work" is 8 kind of a broad thing. You would at a minimum have 9 to go into your manufacturing process and your 10 documentation and your supply chain and make a lot of 11 changes. So I don't know if you consider that a lot 12 of engineering. 13 Q. That's probably vague. Certainly -- I won't 14 say "certainly." 15 Don't you agree it wouldn't have been 16 technically infeasible? No double negative. 17 Would you agree that it would have been 18 technically feasible to do that in the fall of 2003 19 if Rayovac were forced to take the dryer out? 20 A. And how soon start selling these without the 21 dryer? 22 Q. Well, how long do you think it would take 23 them to do it? 24 MS. WENDLANDT: Objection.</p>	<p style="text-align: right;">Page 207</p> <p>1 see that? 2 A. Yes. 3 Q. Are you aware that Braun has a product on the 4 market which employs induction heating as opposed to 5 using a fan for drying the shaving head? 6 A. Yes. 7 Q. Do you offer any opinion in this report as to 8 how much time and effort it would require Rayovac to 9 change its cleaning system to remove the fan and 10 instead incorporate an induction heater for drying? 11 A. No. 12 Q. And have you considered that question? 13 A. Again, no. 14 It would require I know a lot more about 15 Rayovac, its internal workings, to be able to make 16 that kind of estimate. 17 Q. Did you request any information regarding 18 Rayovac's inner workings? 19 A. No. 20 I should also mention I didn't -- I 21 didn't think I needed to -- I didn't think it was 22 necessary for me to provide such an estimate. All I 23 did was really respond to Mr. Phillips' assertions. 24 Q. Again, just going back with respect to the</p>
<p style="text-align: right;">Page 206</p> <p>1 A. I would have to speculate, but -- as I 2 described, depending on the organization, your 3 manufacturing, all those things would have to come -- 4 Q. Do you think this would be a matter of years? 5 A matter of months? 6 A. I don't know. It would really depend on the 7 efficiency of -- the rapidity with which they can 8 implement these kinds of changes across sort of a big 9 enterprise. I would hate to give a time. 10 Q. So, you sitting here, you have no opinion 11 expressed in your report as to how long it would take 12 Rayovac to implement that change as a technical 13 matter; is that correct? 14 A. I don't believe I gave any kind of estimate 15 of that. 16 Q. And is that something that you considered 17 before today? 18 A. That I considered -- sorry, what was the 19 question? 20 Q. Have you considered how much time and effort 21 it would take for Rayovac to implement the removal of 22 the drying device from its cleaning centers? 23 A. No. 24 Q. Below that is the induction heating. Do you</p>	<p style="text-align: right;">Page 208</p> <p>1 noninfringing substitutes. 2 You don't expect to be offering any 3 affirmative testimony at trial with respect to these 4 substitutes; is that correct? 5 MS. WENDLANDT: Objection. 6 Q. Let me withdraw that question. 7 You don't expect to be testifying at 8 trial as to whether or not Rayovac has the ability to 9 implement the substitutes that Mr. Phillips proposes 10 in his expert report? 11 MS. WENDLANDT: Objection. 12 A. I don't expect to, but if Mr. Phillips 13 provides some argument or somebody else from Rayovac 14 provides some argument saying this is how we could 15 have done it in this much time, then I would feel 16 quite comfortable looking at the technical aspects of 17 that and saying -- and responding, depending on what 18 the contents of the argument are. 19 So all I have done so far is Mr. Phillips 20 would say such and such and such, and I would say, 21 but he fails to show these things, but I don't think 22 I need to do more than that. 23 If he provides a more detailed argument, 24 then I may -- I would anticipate arguing a response.</p>

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<p style="text-align: right;">Page 209</p> <p>1 Q. Okay. On the next page, Page 15, you discuss 2 what you call the "cradle structure covers"? 3 A. Yes. 4 Q. Do you think it would require -- well, how 5 much effort do you think it would require Rayovac to 6 put plastic covers on the cradles? 7 A. This question is similar to earlier ones that 8 I couldn't answer. 9 Q. For this one in particular, do you think this 10 would be an engineering challenge? 11 MS. WENDLANDT: Objection. 12 A. The words "engineering challenge" is part of 13 the story; and as we said, you would have to change 14 your manufacturing, packing, so on and so on. 15 It doesn't require, I think, a lot of 16 inventiveness, but I think all of the comments we 17 made with respect to the passive drying apply here. 18 Q. And those remarks would be you don't how much 19 time and effort it would take? 20 MS. WENDLANDT: Objection. 21 A. I would agree I can't say how long it would 22 take to implement this change. 23 Q. Let me ask you this: If you were assigning 24 this project to students at MIT and you brought in</p>	<p style="text-align: right;">Page 211</p> <p>1 A. At this kind of thing? Absolutely not. 2 To do it right, probably weeks. 3 Q. A couple weeks for a student at MIT to 4 complete that design? 5 A. I mean, to do it to the standard that a 6 professional at Braun, or someone would do, I would 7 think at least a month. 8 Q. With respect to taking the fan out. I am not 9 taking about put it into production and those issues, 10 but completing the design, how long would you expect 11 for one of your students to take to complete that 12 project in a laboratory course? 13 A. Well, if you gave them a lab prototype and 14 you said disable the fan, they could do that quite 15 quickly, say, shorting the leads on the motor, but 16 that wouldn't be anything close to what you could do 17 if you wanted to, say, sell that thing. 18 Q. What else would you have to do if you sell 19 it? 20 A. You can't -- I don't think you can sell a 21 thing with shorted leads that you pumping current 22 toward. 23 Q. Okay. I understand. 24 A. So I think -- so you would have to take out</p>
<p style="text-align: right;">Page 210</p> <p>1 Rayovac -- you teach laboratory courses, correct? 2 A. Yes. 3 Q. And you asked your students at MIT to be able 4 to take Rayovac's existing device and put a lid or 5 cover on it, how long would you expect would be a 6 reasonable amount of time for them to complete that 7 project? 8 A. You're asking to put a cover on a prototype 9 on the bench in our lab? 10 Q. Take Rayovac's device as it stands today. 11 A. Yeah. 12 Q. The prototype, what it would have been in its 13 final stages of development. 14 A. Okay. 15 Q. Say you need to put a cover on this hole that 16 the shaver head goes into. 17 A. That one prototype, or put a cover on that 18 shaver, pull it into the production line, and make a 19 mass produced -- integrate the product and get the 20 product on market or do it in the lab? 21 Q. Let's start with put the cover on in the lab. 22 Finish design. 23 A. Our students aren't all that good. 24 Q. At MIT?</p>	<p style="text-align: right;">Page 212</p> <p>1 stuff. You would have to change the molds and the 2 tooling for the stuff around there. 3 You wouldn't want to have that chamber in 4 which the blower sits without the blower or anything 5 in there. 6 See, that retooling is very time- 7 consuming. Almost any manufacturing change you want 8 to make in a mass-produced item like this is 9 surprisingly time-consuming. 10 So for the student to redesign it so that 11 you would have professional grade product, without 12 the blower and fan, I think, again, would be at least 13 a month. 14 Q. Okay. You also cite in the middle paragraph, 15 with respect to the cradle structure covers, 16 statements in the '328 and '556 patent regarding 17 advantages of the -- of having the cradle open as 18 opposed to having a lid? 19 A. Yes. 20 Q. Are you relying upon what is stated in the 21 '328 patent and the '556 patent for evidence of what 22 consumers would or would not prefer? 23 A. I'm relying on it, yes. 24 Q. For what?</p>

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<p style="text-align: right;">Page 213</p> <p>1 MS. WENDLANDT: Objection.</p> <p>2 A. Okay. I am relying on the statements in the</p> <p>3 patents to tell us -- as written here, relying on the</p> <p>4 statements in the patents to tell us that a product</p> <p>5 without the need for cover or without a cover is an</p> <p>6 advantage.</p> <p>7 One advantage I think that is mentioned</p> <p>8 in the patent, although it is not quite quoted here,</p> <p>9 is that it makes easier to use.</p> <p>10 The patent may also have -- I don't</p> <p>11 recall, but it may mention more advantages:</p> <p>12 simplicity, low cost or something like that.</p> <p>13 Q. With respect to the next -- bracket without</p> <p>14 vertical projections. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Have you taken into the account the fact that</p> <p>17 Braun now sells a product without a bracket?</p> <p>18 A. Well, I haven't looked at that product, and I</p> <p>19 think -- let me make sure I -- so I think the</p> <p>20 question is whether eliminating the vertical</p> <p>21 projection eliminates the bracket or renders this</p> <p>22 thing not a bracket?</p> <p>23 Q. Well, is the vertical projection in Rayovac's</p> <p>24 devices a part of the cradle structure?</p>	<p style="text-align: right;">Page 215</p> <p>1 specification says that the bracket, along with the</p> <p>2 cradle, form a U-shape thing into which you insert</p> <p>3 the shaver, and it's not clear to me if I shorten 10,</p> <p>4 make the cradle deeper, that I still wouldn't have</p> <p>5 that bracket that projects out to create the U-shape</p> <p>6 to somehow enclose the shaver.</p> <p>7 Q. Is it your opinion, then, it is not possibly</p> <p>8 to design a cleaning device of that sort without</p> <p>9 including a bracket?</p> <p>10 MS. WENDLANDT: Objection.</p> <p>11 A. No.</p> <p>12 Q. Do you misunderstand what Mr. Phillips is</p> <p>13 saying about making the cradle deeper to bear more of</p> <p>14 a load?</p> <p>15 MS. WENDLANDT: Objection.</p> <p>16 A. Well, it's rather vague.</p> <p>17 In other words, it -- I don't think I</p> <p>18 misunderstand, but what I -- what is unclear to me is</p> <p>19 whether he's going to get rid of a projecting support</p> <p>20 altogether. What he mentions, I believe, is</p> <p>21 eliminating the vertical projection.</p> <p>22 Q. Okay.</p> <p>23 A. And that's all I say here is that eliminating</p> <p>24 the vertical wouldn't eliminate the need for</p>
<p style="text-align: right;">Page 214</p> <p>1 A. The vertical projection in Rayovac's devices</p> <p>2 is not part of the cradle structure.</p> <p>3 Q. So Mr. Phillips is proposing that you get rid</p> <p>4 of that vertical projection?</p> <p>5 A. Okay.</p> <p>6 Q. You understand that, correct?</p> <p>7 MS. WENDLANDT: Objection.</p> <p>8 A. Well, sort of seeing a drawing of it, it is</p> <p>9 not clear exactly what the proposal -- what exactly</p> <p>10 the proposed design is.</p> <p>11 Q. Have you asked Braun to see Braun's products?</p> <p>12 A. No.</p> <p>13 Q. Were you curious how they got rid of the</p> <p>14 vertical support?</p> <p>15 A. Not particularly.</p> <p>16 Q. Why?</p> <p>17 A. Because I think the real question is if you</p> <p>18 want to eliminate the bracket, is eliminating the</p> <p>19 projection -- and the projection -- so the Rayovac</p> <p>20 device -- so even if you made that vertical much</p> <p>21 smaller or made that structure so broad that it</p> <p>22 appeared not to be a distinct projection, you would</p> <p>23 still have this projecting support that forms U-shape</p> <p>24 -- the '328 specification -- uhm, you know, the '328</p>	<p style="text-align: right;">Page 216</p> <p>1 projected support.</p> <p>2 So just by saying he is going to make the</p> <p>3 cradle deeper, make it shorter, he hasn't showed us</p> <p>4 something that doesn't have a bracket.</p> <p>5 Q. Okay. Let's go back to your real-world</p> <p>6 hypothetical again.</p> <p>7 How difficult of a project would it be to</p> <p>8 assign to your students, taking the laboratory</p> <p>9 course, taking Rayovac's device, and their assignment</p> <p>10 is to remove the bracket?</p> <p>11 A. Oh, that's very difficult. I don't think</p> <p>12 they would do it in a semester.</p> <p>13 Q. Why would that be very difficult?</p> <p>14 A. You would have to change the dimensions of</p> <p>15 many things.</p> <p>16 Second, we haven't quite spelled out how</p> <p>17 to get rid of the bracket yet. So I would be saying</p> <p>18 to them come up with something that doesn't involve a</p> <p>19 bracket and define for them the bracket, and I can't</p> <p>20 yet based on this suggestion tell them how to do</p> <p>21 that.</p> <p>22 Second, the changes you would be making</p> <p>23 to this system are -- there are a lot of changes. So</p> <p>24 it seems quite difficult to me.</p>

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<p style="text-align: right;">Page 217</p> <p>1 Q. So this would be a hard project as opposed to 2 take out the fan and put on the cover?</p> <p>3 MS. WENDLANDT: Objection.</p> <p>4 A. I didn't say any of them were easy, but I 5 would say this is more difficult.</p> <p>6 Q. We need to talk about the air-drying system, 7 too.</p> <p>8 With respect to the air-drying system, 9 you don't disagree that that -- the gas-cleaning 10 system --</p> <p>11 A. Gas-cleaning.</p> <p>12 Q. Gas-cleaning. Pardon me.</p> <p>13 That the gas-cleaning system wouldn't 14 infringe the '328 patent, do you?</p> <p>15 MS. WENDLANDT: Objection.</p> <p>16 A. I don't think I have rendered an opinion on 17 that. That's a pretty big statement. So that would 18 require a little thought.</p> <p>19 Q. Really? What would you have to think about?</p> <p>20 MS. WENDLANDT: Objection.</p> <p>21 A. I would just want to go back through claims 22 and construction and make sure that it didn't read 23 upon it.</p> <p>24 Q. Well, someone who employs gas, would that</p>	<p style="text-align: right;">Page 219</p> <p>1 agree with me here.</p> <p>2 Your opinion with respect to the 3 gas-cleaning system is essentially you can't tell 4 whether Mr. Chasen has this system ready to go or 5 not; is that correct?</p> <p>6 MS. WENDLANDT: Objection.</p> <p>7 A. In fact, I would say there are indications 8 from what is provided to us that he doesn't have it 9 ready to go. So it is a little bit stronger 10 statement than we can't tell if it is ready to go.</p> <p>11 Q. Would it surprise you -- well, are you aware 12 that the trial is currently set for October?</p> <p>13 A. I didn't realize that it was set.</p> <p>14 Q. Scheduled. Pardon me. You are right. 15 Currently scheduled for October?</p> <p>16 A. Yes.</p> <p>17 Q. Would it surprise you if Rayovac had a 18 completed gas-cleaning system by October?</p> <p>19 MS. WENDLANDT: Objection.</p> <p>20 Q. I mean not a prototype, but one that would be 21 ready for commercialization?</p> <p>22 MS. WENDLANDT: Objection.</p> <p>23 A. Not necessarily. If they put enough 24 resources onto a project like that, they could do it</p>
<p style="text-align: right;">Page 218</p> <p>1 have a cradle that would receive or retain fluid?</p> <p>2 A. I think not.</p> <p>3 Q. Do you offer any opinion with respect to 4 whether or not consumers would like or dislike a 5 gas-cleaning system as opposed to a liquid-cleaning 6 system?</p> <p>7 A. Again, I think that I only drew from 8 Mr. Chasen's testimony.</p> <p>9 So I don't think I -- I don't think I 10 offer any sort of homemade marketing survey.</p> <p>11 Q. Okay. And you don't think you would be 12 qualified to do that, correct?</p> <p>13 A. Given the data, I think I could do it, but 14 just...</p> <p>15 Q. As an expert in the sense of testifying in 16 court?</p> <p>17 MS. WENDLANDT: Objection.</p> <p>18 A. That's, again, a large hypothetical.</p> <p>19 Potentially depending on the type of data 20 that I'm given, I know the basics of this.</p> <p>21 Of course, I would suggest they maybe get 22 a more expert consumer products marketing person to 23 do it, but I...</p> <p>24 Q. Okay. Paraphrasing a bit, I will see if you</p>	<p style="text-align: right;">Page 220</p> <p>1 pretty quickly.</p> <p>2 Q. How quickly do you think they could do it if 3 they put enough resources on it?</p> <p>4 MS. WENDLANDT: Objection.</p> <p>5 A. That's one I already have had so much trouble 6 answering.</p> <p>7 Of course, I should say, that there are 8 indications from what we have seen that they are not 9 close to ready.</p> <p>10 If they had other stuff, in other words, 11 it's not clear they have necessarily shown us their 12 most advanced thing as of the date of the report and 13 deposition.</p> <p>14 Again, this is another way in which they 15 could be ready.</p> <p>16 Q. Okay. Did you review the report of Laura 17 Stamm in connection with your analysis of 18 noninfringing substitutes?</p> <p>19 A. I don't think so.</p> <p>20 Q. So you have no opinion -- sitting here today, 21 you have no opinion whatsoever as to what she had to 22 say about noninfringing substitutes?</p> <p>23 MS. WENDLANDT: Objection.</p> <p>24 Q. If at all? If anything?</p>

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<p style="text-align: right;">Page 221</p> <p>1 A. I don't recall seeing any such report. 2 Q. You can't comment on what you have not seen? 3 A. Yes. Yes. 4 Q. If you heard about it, maybe you could. 5 One last question. Are you aware that 6 Mr. Phillips opines upon, how it referred to, as 7 secondary considerations of nonobviousness in his 8 report? 9 A. I seem to recall that, yes. 10 Q. Am I correct that you do not offer any 11 opinions on secondary considerations of 12 nonobviousness, right? 13 A. I don't recall having done so. 14 At most, I might have quoted somebody. I 15 don't recall giving any opinions on that. 16 Q. I mean, can you say one way or the other 17 whether you have? 18 A. To be definitive, I would have to read -- 19 MS. WENDLANDT: Jim, we can stipulate 20 that if it is not in the report, he hasn't opined on 21 it, or he can sit here and read it. 22 Q. I don't want you to read it. 23 A. I could be proven wrong, because I have 24 thought about these issues, but I don't recall</p>	<p style="text-align: right;">Page 223</p> <p>1 ERRATA SHEET 2 I, Samir Nayfeh, do hereby certify 3 that I have read the foregoing transcript of my 4 testimony, and further certify that it is a true and 5 accurate record of my testimony (with the exception 6 of the corrections listed below): 7 Page Line Correction 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 Signed under the pains and penalties of perjury this 21 _____ day of _____, 2005. 22 _____ 23 _____ 24 Samir Nayfeh</p>
<p style="text-align: right;">Page 222</p> <p>1 writing about it. 2 MR. SHIMOTA: That being said, thank you 3 for your time. I have no further questions. 4 MS. WENDLANDT: No questions. 5 THE VIDEOGRAPHER: This marks the end of 6 videotape number three in the deposition of Samir 7 Nayfeh. We are going off the record. The time is 8 4:30. 9 (The deposition was adjourned at 4:30 p.m.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 224</p> <p>1 COMMONWEALTH OF MASSACHUSETTS) 2 SUFFOLK, SS) 3 4 I, Deborah L. Roth, and Notary Public in and for the 5 Commonwealth of Massachusetts, do hereby certify 6 that there came before me on August 26, 2005, the 7 person hereinbefore named, who was by me duly sworn 8 to the truth concerning any knowledge in this cause; 9 that that person was thereupon examined under oath, 10 and the examination reduced to typewriting; and that 11 the deposition is a true record of the testimony 12 given by the witness. 13 I further certify that I am neither related to nor 14 employed by any attorney or counsel employed by the 15 parties hereto or financially interested in the 16 action. 17 In witness whereof, I have hereunto set my hand this 18 29th day of August 2005. 19 20 21 DEBORAH ROTH, Notary Public 22 My commission expires: 2/7/08 23 24</p>

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